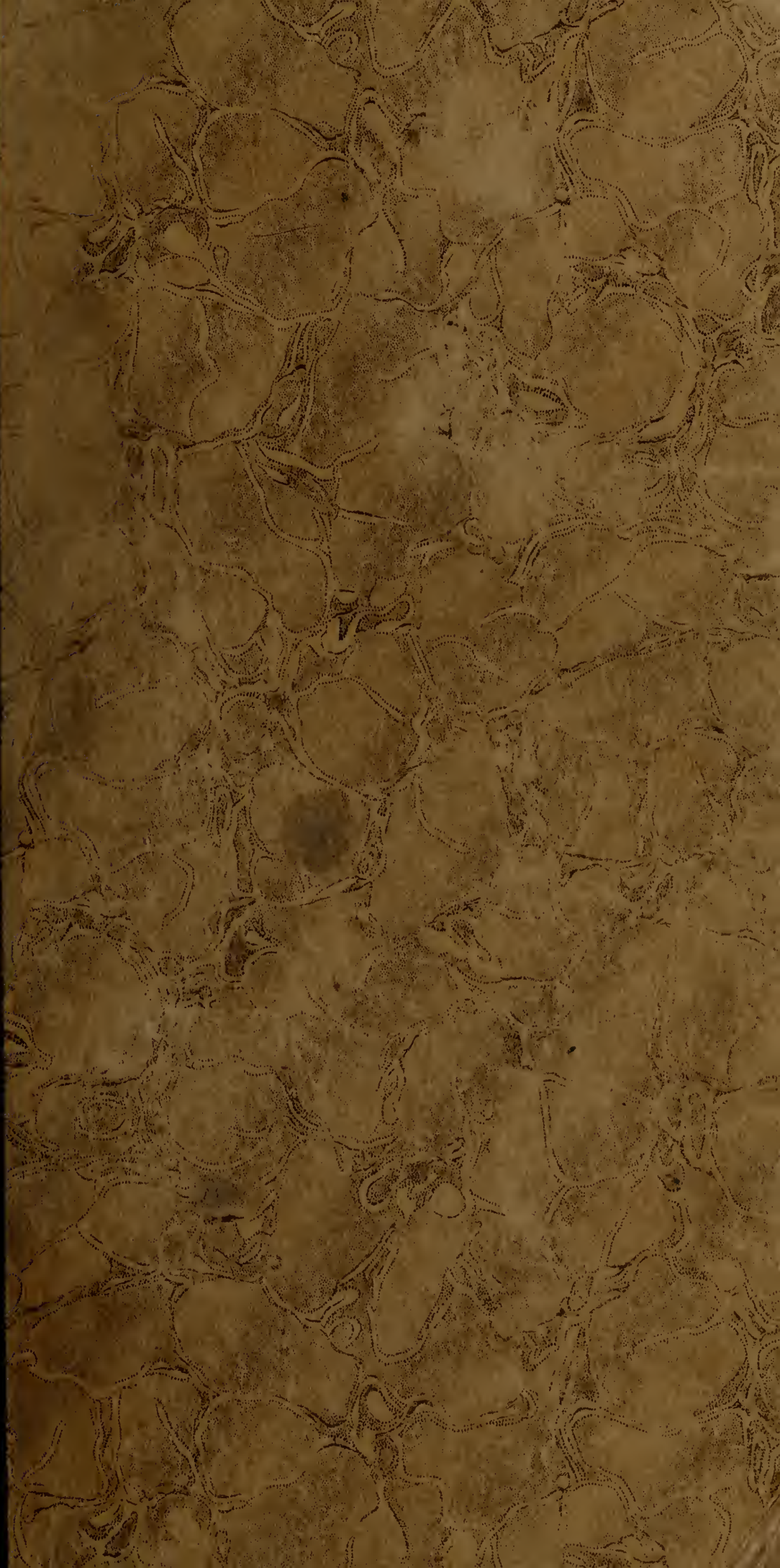


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STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

EDITED BY THE FACULTY OF POLITICAL SCIENCE OF
COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

Volume I]

[Number 1

THE DIVORCE PROBLEM

A STUDY IN STATISTICS

BY

WALTER F. WILLCOX, Ph.D.

*Sometime Seligman Fellow in Political Science, Columbia University,
Associate Professor of Social Science and Statistics,
Cornell University*

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PREFACE

THE study of divorce of which this pamphlet is the result was commenced when fresh from the reading of philosophy in Germany, and a month or more passed in turning the leaves of Trendelenburg, Bluntschli, Stahl and the whole line of "Naturrecht" theorists. Nothing was found to shake my conviction that the policy of the Catholic church, refusing remarriage in all cases, is the ideal one for a state to adopt. Then I chanced upon M. Bertillon's *Étude Démographique du Divorce* and, undeterred by the columns of figures, read and reread it. It convinced me that its method was sound and, deserting the *a priori* road of laying down what marriage and divorce ought to be, I applied myself to a patient examination of Mr. Wright's Report¹ in the effort to understand what they are. My conclusions are contained in the following pages. In their present form, therefore, they are based on two books; the method is derived from Bertillon, the data from Wright, and a critic must have keen eyes to detect in them any influence of the first six weeks' reading. If a similar revolution should be started in the mind of any reader by the facts here recorded, I shall be most amply repaid.

Some errors would be almost inevitable in reviewing so complicated a subject as the divorce legislation of the various states and the changes it has undergone in the past twenty years. If any such have been made by Mr. Wright, and as these pages are going through the press I have received some reason to believe that in the case of Vermont (§ 27) they have

¹ *A Report on Marriage and Divorce in the United States, 1867 to 1886*, by Carroll D. Wright, Commissioner of Labor. Washington, 1889.

been, they will indirectly affect my results. In such cases my criticisms would apply to Mr. Wright's evidence for the influence of legislation upon the divorce-rate, and not to the facts. There is no reason to doubt, however, the correctness of practically all the statements of fact in the Report. For this reason, and because their verification would have been in many cases impracticable, I have not attempted it in any case.

It is a cause of regret that I have been compelled so often to differ from, or criticise the results of, the able statistician at the head of the Department of Labor. No one can value more highly the work Mr. Wright has carried to success in the face of numerous difficulties. The evidence of my admiration, however, may be found in the weeks of toil I have profitably spent over the book more clearly than in any words of praise.

In conclusion, I desire to express thanks for their courteous assistance to Dr. S. W. Dike, Secretary of the National Divorce Reform League, to the Librarians of Columbia College, and of the Massachusetts State Library, and, above all, for frequent and full replies to all letters of inquiry, to the Hon. Carroll D. Wright, Commissioner of Labor.

W. F. W.

MALDEN, MASS., *March, 1891.*

PREFACE TO THE SECOND EDITION

Aside from adding a short appendix, inserting one map (p. 38) pruning a few phrases and correcting a few errors, I have made no changes in this reprint. The main conclusions I still hold, but a reader interested in the argument to prove a transfer of divorce cases to Utah (pp. 53-55) will find with other results an important modification of view in a later article (*Political Science Quarterly*, Vol. VIII., pp. 85-88).

W. F. W.

CORNELL UNIVERSITY, *September, 1897.*

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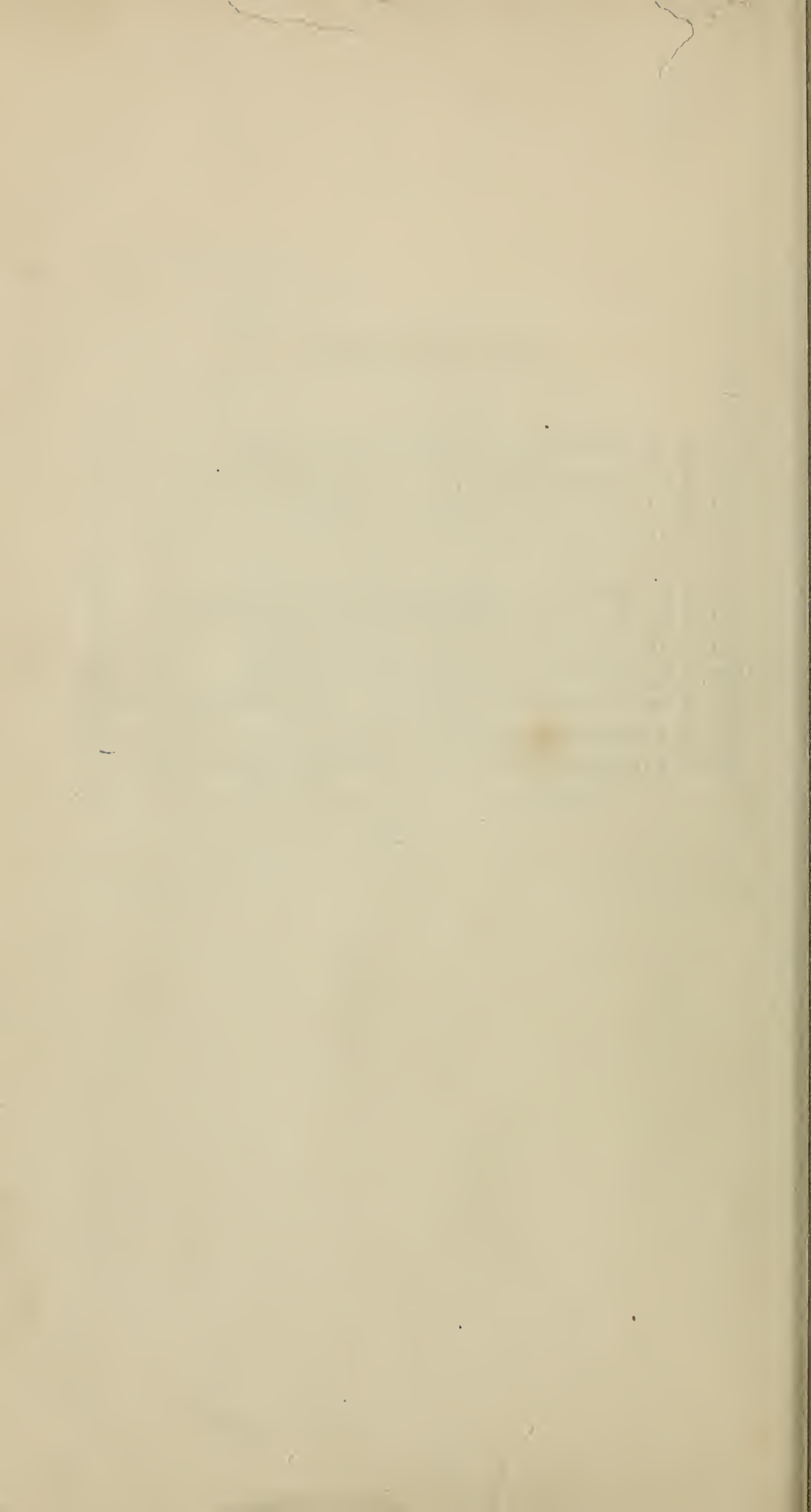
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THE DIVORCE PROBLEM

A STUDY IN STATISTICS

§ 1. *Introduction*

The "Report on Marriage and Divorce" transmitted to Congress some years ago by the Commissioner of Labor, Hon. Carroll D. Wright,¹ might have been entitled a "Report on Divorce." Statistics of marriage are conspicuously absent. "Thoroughly incomplete and unsatisfactory" is the Commissioner's own characterization of that part of his work [p. 87.]² Almost its only value is to reflect and reveal the wretched condition of marriage records in most of our states and territories. But the bulky volume is a mine of information on the subject of divorce in this and foreign countries. Like other mines, however, it does not carry its ore on the surface; it needs to be worked. The valuable introductory chapters of Mr. Wright have by no means given an exhaustive interpretation of its figures. Some of his conclusions, indeed, as will be shown at length in the course of the following argument, are questionable or erroneous.

The discussion of divorce maintained in the periodical press

¹ *A Report on Marriage and Divorce in the United States, 1867 to 1886, including an Appendix Relating to Marriage and Divorce in Certain Countries of Europe.* By Carroll D. Wright, Commissioner of Labor. Washington, 1889, pp. 1074.

² Numerals in square brackets [] refer to the pages of Mr. Wright's Report.

since the publication of this Report, has done little more than arouse interest and diffuse a vague conviction that something should be done, perhaps in this way occasioning a move recently made by the New York legislature, under the inspiration of Governor Hill. A commission of three has been appointed in that state to promote uniformity of legislation in our various jurisdictions, and has taken the conflicting laws of marriage and divorce under consideration in the effort to harmonize their differences. A commendable object, surely; but suppose it accomplished, how much good would be done? Would the increase of divorce be checked or even appreciably affected?

The publication of the Report and the appointment of the Commission are the most important of recent steps towards divorce reform; but the relation of the two, the bearing of the former on the latter, has not been recognized. In reality, Mr. Wright's volume contains an answer to the question: What can such a commission accomplish for the reform? But this answer does not lie on the surface, nor has it been read truly and clearly in the analysis of the figures. To reach it we must mine into the tables, re-arrange and re-interpret them. The direct object of this paper is to determine the influence of recent legislation in the United States on the frequency of divorce, by conclusions drawn from the figures now offered for study. The question must be attacked by slow and indirect approaches, starting with a more exact ascertainment of the nature and dimensions of the problem. Accordingly, the first part will be occupied with a determination of its general statistical phases; the second, with a study of the effects of legislation in this and foreign countries; and the last, with some suggestions upon the causes and true remedy for divorce.

PART I

GENERAL STATISTICS OF DIVORCE

§ 2. *Comparison between the United States and Other Countries*

The statistics of foreign countries presented in the excellent Appendix to the Report, make such a comparison possible. The largest absolute numbers are reported from Germany and France; each country has about one-fourth as many divorces as the United States. The largest numbers relative to population are found in Switzerland and Denmark, whose divorce-rate is but little better than the average for our whole country; six Swiss cantons, indeed, show as high rates as the New England states. The smallest numbers relative to population are found in Great Britain and Ireland, the British colonies, Canada and Australia, Norway, Russia and Italy. On summing up the divorces and separations in all the countries whose records are given, it appears that more are probably granted in the United States than in all the rest of the Christian world, Protestant, Catholic and Greek; that is, more than in all Europe, outside the Balkan Peninsula, all civilized Australia and America. On account of the insufficiency of data, this result can be stated only as a probability. Returns are given, however, for all Christian Europe except Spain, Portugal and Greece. Outside of Europe, the Appendix gives statistics for Canada only, and to these I may add some figures for Victoria¹ and New South Wales.² In a few instances the data for 1885 are not given, and must be estimated from those of earlier years.

¹ *Victorian Year Book*, 1880-81.

² *Handbook of New South Wales Statistics*, 1887.

The following table gives the number of divorces granted in 1885 in the various countries of the Christian world, from which either statistics or an estimate based on statistics can be obtained.

TABLE I.
Divorces in the Christian World in 1885.

Canada	12	Holland.	339	Russia.	1,789
Great Britain }	508	Denmark ¹	635	Australia ²	100
and Ireland }		Norway ¹	68		
France	6,245	Sweden	229	Total	20,111
Italy	556	Germany.	6,161	United States.	23,472
Switzerland	920	Austria	1,718		
Belgium	290	Roumania	541	Excess	3,361

It is very doubtful whether the number of divorces and separations in Spain, Portugal, Greece, Mexico, Central America and South America, all told, would equal this excess of over 3,300. But in the absence of direct evidence the reader must form his own opinion on that point from an examination of the table. So far as statistics are published we may safely go, and conclude that the number of divorces in the United States is considerably in excess of the number reported from all the rest of the Christian world.

§ 3. *Rate of Increase*

The divorce question, however, is fundamentally a problem, not in social statics, but in social dynamics. The number of divorces granted in a single year, either in one country or in the world, is no measure of its importance. It is a rising tide, and derives its main significance not from its level at any one moment, but from the rapidity of its flow. The tide is rising almost all over the world, but nowhere is it so high, nowhere does it rise so fast as in these United States. Alarmists exclaim that it betokens the ruin of our whole social fabric, and free-lovers exult that the world is advancing towards the light. To the optimist it is merely a temporary set-back, an eddy in the current of our triumphant democracy; but to the

¹ Estimated on the basis of returns for previous years.

² Estimated on the basis of partial returns.

sociologist it is a phenomenon to be neither approved nor condemned, only analyzed and explained.

In attempting to estimate from the statistics the rate of increase of divorce in the United States we are met on the threshold by two possibilities of error.

§ 4. The number of divorces is not reported with absolute accuracy, for the records have not been preserved intact in all parts of the country. The Chicago fire destroyed the records of Cook county, the Cincinnati court-house fire those of Hamilton county; and those two are but conspicuous and familiar instances of what has happened in ninety-eight counties¹ in the course of the twenty years. These counties are charged with 39 divorces for the first year of the twenty, and 1,768 for the last, an increase of 1,729. The other 2,526 courts with complete records show an increase of 13,869. That is, the former, with one twenty-fifth the population of the country, are apparently responsible for one-ninth the increase. To eliminate the obvious error it is necessary to know the true rate in these counties. A simple method of finding it would be to apply to them the average rate of increase in the rest of the country; but a moment's thought will show this method to be inadmissible, because the increase of divorce is closely related to the increase of population, and the latter is much more rapid in these counties than elsewhere. From 1870 to 1880 they grew in population 47 per cent., and the rest of the country 29 per cent. Still further, divorces increase in large cities like Chicago and Cincinnati more rapidly than population; and the same is true of the southern and southwestern states, which contain a large majority of the other 96 counties. Therefore it cannot be far wrong to estimate that the increase of divorce in these counties has been twice as rapid as the average for the rest of the country. On that assumption

¹The records of 159 counties are imperfect [p. 22], but in only ninety-eight have the divorce records been so injured as to affect the accuracy of the total increase for the twenty years.

their divorces in 1867 numbered 344, instead of 39, and the total increase in the country for 20 years was 15,293, instead of 15,598. The exaggeration of increase due to this cause is thus about two per cent.

§ 5. The former error referred to the success with which the records once made have been preserved. A second may lurk in a neglect to make the records complete. Some divorces may have been granted, but not entered at all. In the very nature of the case, no proof of such an error, and, *a fortiori*, no measure of its magnitude, can be derived from the Report. One slight indication is all I have discovered. It might be supposed that the court roll would indicate the cause for which the decree is granted with the same uniformity with which the records of criminal courts state the ground of sentence. Yet 10,315 decrees were reported to Washington as issued for "cause unknown" [pp. 444-601]. When the rolls show such negligence as this, when large states like Pennsylvania, Indiana and Texas record from five to fifteen per cent. of their divorces without mention of any cause, it may be assumed that occasionally a little greater neglect has omitted the entry altogether. Admitting this to be true, the proportion of such unrecorded divorces was probably greater in 1867 than in 1886, for the records have come to be more carefully kept. In 1867 $4\frac{3}{4}$ per cent. were reported as decreed for cause unknown, but in 1886 the percentage had sunk to less than $2\frac{1}{2}$. Therefore, the error, assuming it to exist, would not only affect the absolute number for each year, but also accentuate the rate of increase, just as the omissions in the census of 1870 led to an overstatement of the growth in population in the southern states in the following decade.

It is probable, then, that as the years went by an increasing proportion of the divorces granted were recorded; and an increasing proportion of those recorded were preserved until Mr. Wright's investigation. These two errors will enter into all the following calculations of the rate of increase and affect the

results. The former might, perhaps, be eliminated, but only by a long and intricate computation for each case, and the latter would still remain quite indeterminable. Therefore, a frank statement of them at the start must atone for their entire neglect in the subsequent discussion.

§ 6. *Increase with reference to Courts Granting Divorce*

Divorces are granted in the United States ordinarily by county courts. A few counties have two divorce courts. A somewhat larger number of courts have jurisdiction over more than one county. Hence the number of courts is closely dependent upon the number of counties, but somewhat smaller. In 1886 there were about 2,734 counties and 2,624 divorce courts. As the number of counties in 1867 was about 2,243, that of the courts may be computed approximately as 2,153. In that year they issued 9,937 divorces, or an average of 4.6 to each court. In 1886 the 2,624 courts granted 25,535 divorces, or an average of 9.7 to each court. So the number of divorces grew more than twice as fast as the number of courts. But probably not one of these courts is occupied exclusively with divorce suits, and their other business of all kinds must have increased rapidly in the twenty years. They have become more and more crowded with cases, and in danger of falling into arrears with their docket. Many of them have had to face the same difficult question that has recently vexed the national House of Representatives: How shall we reconcile our duty to transact the nation's increasing business with the seemingly incompatible duty of continuing a deliberative body? In this quandary not a few judges have treated divorce cases as Congress has treated private pension bills. In both cases, there has been an apparent harmony of interests. In one the pension applicant has wanted to obtain his money, the Treasury to reduce the surplus and the Congress to save its time; in the other, parties to a divorce suit have been seldom at variance in the single matter of desiring the decree, and the judge has often deemed it a matter of private concern, and saved his

time for public affairs or suits involving a real conflict of interests. Nor has he been restrained so much as usual by the danger of appeal ; that has been reduced to a minimum.

§ 7. *Increase with reference to the Population*

The census of 1870 is admitted to be inaccurate and that of 1890 is claimed to be so. Therefore it is difficult accurately to determine the rate at which the population has been increasing. Without turning aside to discuss the question, it may be assumed that the annual increase has been approximately $2\frac{1}{2}$ per cent., and the decennial increase approximately 28 per cent. Of course, the increase of population has varied slightly from year to year, but nothing like so widely as the increase of divorces. The latter has swung between the extremes of a decrease of .9 per cent. in one year, and an increase of 15.1 per cent. in another. But the average increase is 5.4 per cent. a year, or somewhat more than twice the increase of population. The second decade increased over the first 69.2 per cent.

§ 8. *Increase with reference to Married Couples*

The old law distinguished two kinds of death, natural and civil. Natural death was the end of life by disease, accident or otherwise ; civil death was its constructive or legal termination, as by conviction of treason or admission to a monastery. Civil death is no longer recognized, but to this day a marriage may die either naturally, by the death of one or both of the partners, or civilly by a decree of divorce.

Now, the death-rate is found by comparing the annual number of deaths with the number living ; and, similarly, the divorce-rate, or the civil death-rate of marriages, is to be found by comparing the number of marriages dying annually by decree of court with the number remaining alive. For determining the divorce-rate, therefore, the number of married couples is as indispensable a datum as the number of divorces. Unfortunately in the United States the former is only a *quaesitum* ; no national census has ever furnished this important information.

Therefore Mr. Wright has attempted to supply its place by an estimate. Several states in various parts of the country, Massachusetts, Rhode Island, New York, Michigan and Kansas, have given in their state censuses the number of married couples. Mr. Wright has obtained the average of their results and extended it to the whole country, except a few frontier states. In this way the number of married couples has been determined to be about 18.9 per cent. of the population.¹ With the fragmentary material obtainable, probably no better method of arriving at a result could be devised, and yet this is so inaccurate as to be almost useless. If the number of married couples be admitted to stand in a *constant* ratio to the population, there is no advantage in comparing the divorces with the former rather than the latter. But it is precisely because the ratio is not constant that scientific statisticians insist that the comparison should be with the number of married couples, not with the total population. No fault could be found with Mr. Wright's tables [pp. 148, 149, 160, 161], if their character were clearly stated. But, on the contrary, the incorrect and misleading assertion² is made [p. 147] that, "in every instance in which it has been possible to test the estimated number by the actual facts, it has been found to be either true or within one-half of one per cent. of the truth." In reality the *ratio* varies from 18.9 in New York (1875) to 19.9 in Michigan (1884), and from 17.1 in Michigan in 1854 to 19.9 in the same state in 1884. The variations shown by counties within the same state are much greater. In Massachusetts (1875), Berkshire county had a ratio of 16.3, and Barnstable one of 22.5. In New York state (1875), New York county showed 17.2, and Cattaraugus 21.8. Obviously these variations in the ratio repre-

¹ Subsequently the Eleventh Census showed it to be 17.83 per cent.

² Here, and throughout this monograph, my criticisms are based on the first edition of the Report. As these pages are going through the press, I am informed by Mr. Wright that this assertion has been corrected for the forthcoming edition. My general criticism on his assumption that the ratio is constant remains, however, unaffected by the change.

sent variations more than five times as great in the *number* of married couples computed from them. Accordingly, among the instances in which I have found data for verification of the estimates, the maximum error has been, not .5 per cent. as stated, but 5.5 per cent., and when the same ratio is subsequently applied to New York city, the error rises to 9.9 per cent. Mr. Wright's tables, then, are not to be rejected, for nothing better can be substituted, but neither are they to be accepted without reserve. They are practically a comparison of divorces with population, thrown into the other form for convenience of statement and of comparison with foreign statistics.

In comparing divorces with married couples, the Report adopts the method of stating the number of couples to one divorce [p. 148]. This is like the obsolete method of expressing the death-rate by the number living to one death. The alternative method will be followed in this paper, and tables constructed by estimating the number of divorces to every 100,000 couples, the main advantage being that in such tables the numbers increase with the divorces, while by Mr. Wright's method the numbers decrease as divorces increase.

It has been observed already (§7) that the annual number of divorces fluctuates widely; and what is true of the country as a whole is more emphatically true of each individual state and territory. Hence, the figures for a single year offer too narrow a basis for accurate tables, and the only alternative is to take a mean of the numbers for consecutive years. This method will be adopted, and the number of divorces in 1870 uniformly computed by averaging the number for the seven years 1867-1873, and similarly the number for 1880 will be found from the seven years 1877-1883. The treatment of Delaware in the Report is a glaring example of the error that may result from a neglect of this precaution. About 80 per cent. of the divorces in that state are granted by the legislature,¹ and the legislature meets biennially in the odd years. This explains

¹ This information has been kindly furnished by Mr. Wright.

why the annual numbers vary from 1 in 1870 to 21 in 1869 and 21 in 1871, and from 5 in 1880 to 36 in 1879 and 20 in 1881 [p. 139]. By comparing the numbers in 1870 and 1880 with the estimated number of married couples, Mr. Wright concludes [p. 148] that Delaware is more free from divorce than any state except South Carolina, which has no divorce law. The broader and fairer basis of comparison, here adopted, relegates Delaware to the seventh place in 1870, and the fourth in 1880. (§ 20.)

As our attention is confined for the present to the country as a whole, the increase of divorce relative to married couples may be stated in a single sentence. In 1870 there were 155 divorces to 100,000 couples; in 1880, 203.¹ In so abstract a form the full significance of the figures is not evident, and the following section may aid to make their meaning clear.

§ 9. *Increase with reference to its Possible Outcome*

The increase of divorce in this country has at length attracted attention and study. Its progress for the past twenty years has been marked out. During that time the current has been rising steadily and rapidly. But families living on a river's bank in flood are most anxious to know whether the stream is rising one inch an hour, or two, or six. It is their only means for determining how long a time will elapse before the torrent, unless its rise be stayed, will sweep away their homes. Similarly the real importance of the increase of divorce lies in the indication it affords of the lapse of time before its rise will seriously threaten the stability of the particular homes in which each one is primarily interested.

As marriages may end by two means, death and divorce, the simplest method of estimating the future growth of the latter is by comparing the divorces with the total terminations of marriage. Mr. Wright states [p. 185] that the average duration of married life in the United States, until ended by death, may be assumed to be about twenty-four years. Then the annual number of terminations of marriage by death may be

¹ For a more accurate measurement see Appendix.

considered one twenty-fourth of the number of couples. On this basis it is found that of the total of 314,350 terminations of marriage in this country in 1870, 96½ per cent. were by death and 3½ per cent. by divorce. In 1880 the percentage of divorces was 4.8 and in 1890 probably about 6.2. On the assumption that the conditions of the past twenty years remain unchanged, and the population continues to increase through the next century at the rate of 28 per cent. a decade, and divorces at the rate of 69.2 per cent., the latter will constitute a rapidly increasing percentage of the total terminations of marriage, as follows: 1900, 8 per cent.; 1910, 10.4 per cent.; 1920, 13.3 per cent.; 1930, 16.8 per cent.; 1940, 21 per cent.; 1950, 26.1 per cent.; 1960, 31.8 per cent.; 1970, 38.2 per cent.; 1980, 44.9 per cent.; 1990, 52.1 per cent.; 2000, 58.8 per cent. At the end of one hundred years of increase like the last twenty, more marriages would end by divorce than by death. It is obvious that this would involve a fundamental alteration in the nature of the American family. It may be urged that the conditions will not be constant, that in fact they are rapidly altering. This is undeniably true; but it is to be noted that they have shown no tendency to improve in the last twenty years. The progress of divorce has suffered no check. On the contrary it has slightly accelerated. The second quinquennial increased over the first 27.9 per cent.; the third over the second 30.3 per cent.; the fourth over the third 31.4 per cent.

It is not claimed that such a computation has much value as determining the future. The elements are too varying and ill-determined to give any basis for a prediction. Those theoretical considerations, presented later (§ § 35, 36,) must modify the results here stated, and that to an unknown degree. Such a calculation, however, has its importance as magnifying some ten diameters the past increase and making the meaning of its rate more obvious.

§ 10. *Increase among the Negroes*

The court records in the southern states seldom indicate the

color of the parties to a suit and, therefore, no direct statistical evidence on the subject of negro divorces is accessible. [p. 131, f.] Some study of the subject having led me to the belief that the increase among the negroes has been abnormally rapid, the following method of testing the hypothesis was adopted. It is essentially a comparison of the black with the white counties in the same state. If the increase among the negroes had been excessive, the counties containing a large percentage of that race would probably show on the whole an unusual increase of divorce. The counties of seven fairly typical southern states have been grouped in classes; the first including all counties with 1 to 7 per cent. of negroes, the second all with 7 to 17 per cent., the third all with 17 to 35 per cent., the fourth all with 35 to 60 per cent., and the fifth all with over 60 per cent. This grouping is based on the maps in the census of 1880. The divorce-rate relative to married couples has then been determined for each group for 1870 and 1880, and the percentage of increase ascertained. The final result is given in the following table. The figures preceded by a minus sign indicate the percentage of decrease for the decade, the other figures give the percentage of increase. In several instances the first number against each state is based on so small a number of counties as to be less trustworthy than the others. When weighing the meaning of the table, it should be remembered that the average decennial increase of divorce for the whole country was 69.2 per cent.

TABLE II.

Comparison of Decennial Increase in White and Black Counties. (1870-1880).

States.	Counties with 1-7 per cent. negroes.	Counties with 7-17 per cent. negroes.	Counties with 17-35 per cent. negroes.	Counties with 35-60 per cent. negroes.	Counties with over 60 per cent. negroes.
Virginia . . .	—11	44	81	104	100
North Carolina.	28	27	78	114	146
Georgia. . . .	—34	10	30	16	43
Florida. . . .	10	34	104	88	164
Alabama . . .	. .	17	170	118	298
Mississippi. . .	. .	162	52	80	174
Arkansas . . .	52	21	23	90	142
Average. . .	9	45	77	87	152

In all these states but Georgia the counties containing over 35 per cent. of negroes show an increase greater, and in most instances much greater, than the average for the whole country. On the other hand, in all the states but Mississippi (and there the first figure is of little weight because based on only 4 counties, with a total population of about 30,000), the counties with less than 17 per cent. negroes show an increase less than the average for the country. The increase of divorce, be it remembered, is totally different from its absolute amount. We shall have to examine later the question whether the negroes as a race are more addicted to divorce than southern whites.

§ II. *Increase in the Several States*

The method employed in the last section for determining the increase among the negroes is here applied to the states. The number of divorces to 100,000 couples has been calculated for each state in 1870 and 1880,¹ and the percentage of increase for the decade ascertained.

TABLE III.
Decennial Increase in the Several States (1870-1880).

	<i>per cent.</i>		<i>per cent.</i>		<i>per cent.</i>
Connecticut	—26	Wyoming	20	Tennessee	52
Washington	—16	Massachusetts	21	Montana	53
Idaho	—10	Maine	22	New Hampshire	57
Kansas	—9	Ohio	27	California	59
New York	—6	Kentucky	27	South Carolina	67
Nevada	—1	Illinois	30	Virginia	73
Vermont	0	Minnesota	30	North Carolina	100
Rhode Island	1	<i>United States</i>	31	Colorado	111
Delaware	5	Georgia	33	Louisiana	115
Indiana	6	West Virginia	37	Arkansas	121
Maryland	7	Nebraska	39	Dakota	123
Wisconsin	8	Missouri	41	Florida	131
Pennsylvania	16	District of Columbia	44	Texas	139
Oregon	17	New Jersey	45	Mississippi	142
Iowa	20	Michigan	50	Alabama	155

These percentages do not indicate the absolute increase, which in most cases is much greater, but the gain on the population, a far different and more significant matter. All the

¹ Compare Table IX., § 30.

southern states containing many negroes, except the three border states of Delaware, Maryland and Kentucky, have increased more rapidly than the average. The rapidity of increase culminates in Florida and the states about the lower Mississippi :—Alabama, Mississippi, Arkansas, Louisiana and Texas. On the other hand, nearly all the states north of Mason and Dixon's line and east of the Mississippi have increased less than the country as a whole. The exceptions are New Hampshire, New Jersey and Michigan. The states west of the Mississippi are interspersed irregularly in the table. Therefore divorce is increasing most rapidly in the southwest and south, least rapidly in the northeast and north, and with irregular rapidity in the trans-Mississippi states.

The real increase in the south has been even greater than indicated by the table. The errors of the census of 1870 made the population of many southern states too small. Obviously a divorce-rate calculated upon that population would be too large, the increase over it shown by the true rate for 1880 too small.

§ 12. *Duration of Marriage before Divorce*

In 92.7 per cent. of the cases the date of the ceremony and, accordingly, the duration of the marriage, are known. The average length of these 304,726 marriages ending in divorce is given by Mr. Wright as 9.17 years [p. 183]. It does not follow, however, as a careless reader might suppose, that one-half of them continued that length of time before divorce—not at all! In one-half the cases the divorce came after only 6.56 years of married life. But the other half varied in length from 6 to 50 years, and so raised the average to 9.17. For example, imagine a county in which nine divorces were granted, eight at the end of three years of married life, and the ninth thirty years after marriage. Obviously, the average duration of the nine would be six years, and yet it would be of greater sociological interest and significance to know that eight-ninths were granted at the end of three years. One-fourth of all the di-

vorces came within three and one-half (3.42) years after marriage; one-third within about four and one-third (4.36) years; two-thirds within nine and two-thirds (9.66) years; and three-fourths within eleven and five sixths (11.83) years.

The lapse of time between the separation of the parties and divorce was ascertained in 45 selected counties. In half these cases it was less than 1.7 years. Assuming that the results for the whole country would agree with this, it follows that in half the instances the separation of the parties took place within five years after marriage. This confirms, more than the statement of the average duration of the marriage seems to do, the popular opinion that estrangement and separation are most frequent in the early years of married life.

The average length of marriage before divorce varies widely in the different parts of the country. This is shown by the following table compiled from the Report [pp. 835-941].

TABLE IV.
Average Length of Marriage before Divorce (1867-1886).

	<i>years.</i>		<i>years.</i>		<i>years.</i>
Arkansas	6.48	Montana	8.83	Rhode Island	9.97
Tennessee	6.91	Idaho	8.93	Pennsylvania	9.98
Louisiana	7.57	Virginia	8.96	Connecticut	10.04
Kentucky	7.59	Nevada	8.97	Oregon	10.07
Mississippi	7.75	Colorado	9.03	New York	10.21
Missouri	7.78	<i>United States</i>	9.17	Dist. of Columbia .	10.29
Indiana	7.78	West Virginia	9.37	Maine	10.29
Texas	8.07	Iowa	9.46	Delaware	10.40
Florida	8.13	Ohio	9.60	Dakota	10.54
Kansas	8.19	Michigan	9.62	New Hampshire . . .	10.69
Alabama	8.32	Wisconsin	9.82	Vermont	10.80
Wyoming	8.45	California	9.83	Minnesota	10.84
Nebraska	8.47	Washington	9.90	New Jersey	11.69
Illinois	8.59	North Carolina	9.93	Massachusetts	12.12
Georgia ⁴	8.67	Maryland	9.94		

The interval between marriage and divorce is shortest in the southern states and longest in the northern states east of the Mississippi. It is probable that the interval in Europe is somewhat longer than the average for our whole country. Ten years of Swiss statistics indicate an average of 9.8 years,¹ and M. Bertillon (p. 20) says the average is about ten years.

¹ *Die Bewegung der Bevölkerung in der Schweiz im Jahre 1885. Beilage 1.*

Differences of legislation are influential upon this element. For example, Massachusetts continued much longer than her neighbors to require that desertion should last for five years in order to become a ground for divorce. Consequently, the average duration of marriage in divorces of this class, 45 per cent. of the whole number, was a full year longer in Massachusetts than in the adjacent New England states [p. 685].

It is encouraging to find that the duration of marriage before divorce is increasing with considerable rapidity, both in the country as a whole and, so far as my examination has gone, in each of the states. In the first five years the average was 8.86 years; in the last five, 9.59; in the first, one-half the divorces were issued within 6.13 years after marriage; in the last, one-half within 6.83. The average duration of marriage has thus increased nearly nine months in fifteen years. The following table [pp. 818-831] will indicate the facts more clearly:

TABLE V

Increase of Divorces Grouped According to the Duration of Marriage

Duration of Marriage in years.	Divorces granted, 1867-71.	Divorces granted, 1882-86.	Per cent. of increase.
1	2899	5314	83
2	4019	7483	86
3	4974	9426	89
4	4746	9671	104
5	4068	9014	122
6	3388	8274	144
7	3005	7021	134
8	2516	6093	142
9	2133	5305	149
10	2051	5002	144
11	1778	4384	146
12	1530	4089	165
13	1398	3563	156
14	1189	3144	164
15	1134	2931	158
16	934	2721	191
17	914	2217	143
18	742	1877	153
19	694	1577	127
20	645	1459	126
21 and over	4038	8401	133
Total	48,795	108,966	123

It thus appears that the average increase for the fifteen years was 123 per cent., but the increase of divorces granted within four years after marriage was considerably less than this. On the other hand, those granted more than four years after marriage show a larger increase, and the climax is reached in those granted after between twelve and eighteen years of married life. These increased between 143 and 191 per cent.

✶ § 13. *Remarriage after Divorce*

Over and over in the progress of the discussion the assertion has been made that most divorces are obtained in order to open the way to a second marriage, and the conclusion has been drawn that a limitation on remarriage, or a denial of it altogether, would greatly reduce the number of divorces. A most emphatic statement of this character was made in a recent article by Hon. E. J. Phelps. He says :¹

“The question is not whether divorce laws shall exist, but whether they shall permit the divorced parties to remarry. If that right were taken away, nine-tenths, perhaps ninety-nine hundredths, of the divorce cases would at once disappear. In the vast majority of instances the desire on the part of one or the other or both to remarry is the foundation of the whole proceeding.”

No proof is offered of the dogmatic assertion. Mr. Phelps says it is “the result of a long observation of judicial proceedings in this class of cases;” but the observation of any single lawyer, however eminent, is an entirely inadequate basis for his generalization, and cannot be treated as proof. The same opinion, however, is entertained by many thoughtful persons, and merits serious attention. No means of testing it can be found on this side of the water. Having few good statistics of marriage, we have no statistics of remarriage. But the concurrent testimony of the statistics of Berlin, Holland and Switzerland is pertinent and clear. Is it asked : How shall it be investigated by the statistical method ? The answer is not difficult. Marriages end by death or divorce. Now, it is

¹ *Forum*, Dec., 1889, p. 352.

presumable that the death of a husband or wife does not occur, in any appreciable proportion of cases, as a result of the surviving partner's desire to marry again. Therefore, the interval between the death of a husband or wife and the remarriage of a widow or widower may be considered the normal interval, and any diminution of this would register the influence on divorce exerted by a present desire of remarriage. The point has been examined in detail by M. Bertillon in an article, "*Du sort des divorcés*," originally published in June, 1884, in the *Journal de la Société de Statistique de Paris*, and translated the same year for the Journal of the Statistical Society of London. As the article in either form is somewhat inaccessible, one table is here reproduced. That of Switzerland is selected, because the conditions and divorce-rate of that country correspond most closely to our own.

TABLE VI

Marriage-rate of Divorced Persons in Switzerland

Time between end of first and beginning of second marriage.	Of 1000 widowers remarrying within ten years, number remarrying each year.	Of 1000 such divorced men, number remarrying each year.	Of 1000 such widows, number remarrying each year.	Of 1000 such divorced women, number remarrying each year.
Less than 1 year . .	323	300	95	194
1 year	260	255	264	282
2 years	136	151	152	166
3 years	82	106	132	127
4 years	48	53	91	68
5-9 years	108	101	196	125
10 years	43	34	70	38
Total	1000	1000	1000	1000

Does not this table show that divorced men and less clearly that divorced women are not much more disposed to marry directly after the decree than widowers and widows are to marry after the death of wife or husband?

Another series of tables has been compiled by the same

statistician, comparing the tendency to marry shown by bachelors, widowers and divorced men, and by spinsters, widows and divorced women. Until the age of 35, he finds, divorced men and women marry less often proportionately than widowers and widows, but after that age they show a greater tendency to marry. For a detailed proof of this position, the reader is referred to the article already cited.

§ 14. *Distribution of Divorce between Natives and Foreign Born*

The censuses of Massachusetts and New York divide the residents of those states into the three classes of single, married and divorced, and subdivide each into natives and foreign born. Obviously, divorced persons who have remarried would be included among the married; many others would return themselves as single in preference to divorced. Therefore, these data are very untrustworthy; but, on the other hand, the figures in the two states agree in indicating the ratio of divorced natives to married natives to be about four times that of the divorced foreign born to the married foreign born. In the absence of other and more accurate data, these ratios may be applied to the United States. The New York census indicates also the number married among the foreign born. 60 per cent. are married, 52 per cent. to a foreign born husband or wife, and 8 per cent. to a native. In default of further information this must also be extended to the whole country. On that assumption the conjugal condition of 6,679,943 foreign born residents of the United States in 1880, would be as follows: 3,473,570 married among themselves and 534,395 to natives, 2,671,978 unmarried. When compared with Mr. Wright's estimate of the total number of couples in the country, this gives 7,193,728 native couples, 534,395 mixed couples and 1,736,785 foreign born couples. It must be assumed that marriages of mixed couples are as likely to be broken by divorce as those of native couples. The probability is that they are somewhat more so, but no measure of the excess is obtainable. Then the 19,228 divorces of 1880 would be distributed as fol-

lows: 1,023 to foreign born, 1,259 to mixed and 16,945 to native couples. While the ratio of divorces to 100,000 couples for the whole country was 203, that ratio for the native couples alone was 236.

✕ § 15. *Distribution between Catholics and non-Catholics*

Our Catholic population is an element of the problem about which even less is statistically determined than about the foreign born residents. Even the number of Catholics in the country has never been given in any national census, and, therefore, it is necessary to accept the figures of the Catholic Directory, 6,832,954. Because of the lack of information, the important and complicating element of mixed marriages must be disregarded; and the assumption made that there were in this country in 1880 about 1,291,428 Catholic couples, and 8,173,480 non-Catholic (we can hardly say in all cases Protestant) couples. The carefully collected statistics of Switzerland show 73 divorces a year to every 100,000 Catholic couples, 283 a year to every 100,000 Protestant couples and 605 a year to every 100,000 couples of mixed religion (Bertil-lon, p. 32). In default of statistics for our own country, nothing better can be done than to apply these ratios and assume that in this country also divorce is four times as frequent among Protestants as Catholics. The rough approximation thus obtained is as follows: in 1880 there were 18,497 divorces among the 8,173,480 non-Catholic couples, and only 731 among the 1,291,428 Catholic couples. It is probable that the real difference was even greater than this, because the difference of religion would be accentuated in many cases by a difference of race and social position.

§ 16. *Distribution between Negroes and Whites*

The common opinion in the southern states is that divorce there is almost confined to the negroes. Mr. Wright gives expression and qualified indorsement to this idea as follows:

"It is probably true that in nearly all the (12) states named, where the colored population is very dense, nearly, if not quite, three-fourths of the divorces granted were to colored people; at least this is the evidence furnished the Department by clerks of courts and by others in a position to judge with fair accuracy." [p. 132.]

The states named have from 16 to 61 per cent. negroes. As already stated, the records seldom indicate the color of the parties. An *a priori* argument against the opinion quoted may be derived from what is known of divorce in other parts of the world. It is not the poorest and most ignorant classes that frequent the divorce courts; their poverty and ignorance prevent. Among them a change of husbands and wives occurs, if it occurs at all, without appeal to the law. This general fact would apply with especial force to the negroes, because they have been trained into licentiousness by slavery. In the old days, the slave's marriage was governed by his master's choice, and the first effect of freedom would naturally be to substitute his own whim for that of an owner. Is it not strange, even inexplicable, that the negroes, three or four years after emancipation, began flocking to the courts to have their marital changes legalized? Against statistics such an argument would be useless, but against the observation even of clerks of courts it is entitled to some weight. For such observation would be of little value except as to the present, while Mr. Wright asks us to believe that for the whole score of years three-fourths of the divorces have been granted to negroes.

Perhaps the statistics may be so turned about as to furnish indirect evidence, in place of the direct testimony they withhold. If the contention that the negroes receive a majority of the divorces be true, wherever the former are most numerous the latter would probably abound. The states with the largest percentage of negroes would have the greatest amount of divorce. But there is no relation between these two phenomena. Here are the twelve states mentioned by Mr. Wright, arranged in the order of their percentage of negro population, and against each is placed its divorce-rate in 1880. (Compare § 20.)

	Per cent. of negroes.	Divorce- rate.		Per cent. of negroes.	Divorce- rate.
South Carolina	61 . . .	5	Virginia	42 . . .	58
Mississippi	58 . . .	157	North Carolina	38 . . .	30
Louisiana	51 . . .	75	Arkansas	26 . . .	270
Alabama	48 . . .	143	Tennessee	26 . . .	191
Florida	47 . . .	287	Texas	25 . . .	263
Georgia	47 . . .	77	Kentucky	16 . . .	188

Were any conclusions at all to be drawn from this, it would be that states, like Arkansas, Tennessee, Texas and Kentucky, with fewest negroes, have most divorces.

But it is objected, no conclusion of any kind can be drawn. The number of divorces is controlled by the legislation of each state, and of course South Carolina heads the list. It will be shown in the second part of the discussion that the objection is not unanswerable. For the present, however, its cogency may be admitted, and the argument restated in such form as to avoid the difficulty. Since no differences of legislation exist between different counties of the same state, a comparison between counties is not open to this objection. In seven states the counties have been grouped as already explained in § 10, and the annual number of divorces to 100,000 couples computed for each group for both decades. The results are stated in the following table:

TABLE VII
Divorce-rate in White and Black Counties by Decades

States.	Counties with 1-7 per cent. negroes.	Counties with 7-17 per cent. negroes.	Counties with 17-35 per cent. negroes.	Counties with 35-60 per cent. negroes.	Counties with over 60 per cent. negroes.
<i>First Decade, 1867-76.</i>					
Virginia	149	68	36	27	24
North Carolina .	67	33	18	14	13
Georgia	156	92	74	79	44
Florida	338	208	168	191	114
Alabama		104	77	73	45
Mississippi . . .		41	116	58	35
Arkansas	151	111	231	202	186
<i>Second Decade, 1877-86.</i>					
Virginia	132	98	65	55	48
North Carolina .	86	42	32	30	32
Georgia	103	101	96	92	61
Florida	371	379	342	360	301
Alabama		122	208	159	179
Mississippi . . .		108	177	104	94
Arkansas	231	135	282	384	451

From the differences between these two sets of figures the percentage of increase in the white and black counties already given as Table II (§10) was calculated. The present table indicates that in all the states but Arkansas the divorce-rate was less in the black counties than in the white. It may be inferred with reasonable confidence that the negroes do not obtain divorces with so much greater frequency than the whites as is commonly supposed.

It may be objected, the social and economic conditions of the several counties are so diverse that the result is entirely untrustworthy. The answer is, that where so many counties are included in each group (in most cases from 15 to 40, with a population of several hundred thousand), the other differences are in large measure eliminated; and no reasonable cause for the uniformity of result can be found, unless it be the uniform variation of the single element that does vary uniformly, namely, the percentage of negroes. The only instance in which the negro element is almost entirely absent is found in two small counties of Florida, Polk and Manatee, each with about 4 per cent. of colored citizens. They have about 1,160 white couples and 51 negro couples, and are charged with 53 divorces for the twenty years. Very few of these can have gone to the blacks, and yet the rate for the two counties, 267, is almost identical with the average rate in Florida, 287.

On the whole, it seems probable that the average negro divorce-rate is rather below that of the southern whites, but is increasing much more rapidly, and in a few localities or states may have already reached or passed it.

§ 17. *Distribution Between City and Country*

Mr. Wright proves that divorce is more common in cities than in the country, but the method he was compelled to follow is so crude that it fails to fix the amount of difference. In fact, many rural counties have a rate as high as, or higher than, that of the largest city of the state. For example, Berkshire and Hampden counties, Massachusetts, have a rate

considerably above that of Suffolk; and four other counties in that state have a rate practically identical with the Boston one. Now the European statistics prove conclusively that the city rate there is from three to five times that of the surrounding country (Bertillon, p. 55). To reconcile the discrepancy between these figures and ours, it may be assumed that some counterbalancing influences are at work here. Our foreign born and Catholic population has a divorce-rate probably about one-fourth that of the rest of the country, and it is so massed in the cities as appreciably to affect the city rate. The theory that its presence masks the true influence of city life derives some support from the figures of the state censuses; but the evidence is too slight and inconclusive to be cited in detail.

§ 18. *Distribution between Couples with Children and those without Children*

It is probable that the presence of children in a family diminishes the tendency to divorce. Can statistics test this theory and give any measure of the influence thus exerted? If the number of childless couples, the number with children and also the number of divorces in each class, were known, then the divorce-rate in each class might be calculated, and the difference, if any, be found. A rough approximation to an answer may be obtained by combining some figures in the Report with others in the Massachusetts census of 1885. That state is, perhaps, the only one to report the number of childless wives and wives with children. The former are 17.56 per cent. of the whole number of married women. There is only one state, New Jersey, in which the court records indicate with fair completeness whether the parties divorced had or had not children [p. 209]. In that state the number reported as unknown was only 2.6 per cent. Three other states, Minnesota, Maryland and Colorado, report as unknown, respectively, 8 per cent., 14 per cent., 14 per cent. All the rest have records so incomplete as to be worthless for our purpose. By a combination of these figures with the estimated number of couples

for 1875 and the Massachusetts ratio of childless wives to the whole, the following results are obtained:

	Divorces annually to 100,000 cou- ples with chil- dren.	Divorces annually to 100,000 child- less couples.	Ratio.
New Jersey.	45.8	165.5	3.6
Minnesota	96.9	369.8	3.8
Maryland	40.3	140.5	3.5
Colorado	260.7	1421.6	5.4

The large ratio in Colorado may be due to the errors involved in applying to a frontier state a Massachusetts birth rate and a proportion of married couples to population, determined from a few eastern states. On the whole it is fair to conclude, notwithstanding, that childless marriages are between three and four times as likely to end in divorce as marriages with children. The only foreign census cited by M. Bertillon (p. 135), as giving the same datum as that of Massachusetts, is the French census of 1856. The results obtained from that confirm the foregoing. The rate at which separations were demanded was 3.6 times as great among childless couples as among others.

§ 19. *Distribution of Divorces as granted to Husband or Wife*

Nearly two-thirds of the divorces (65.8 per cent.) were granted on demand of the wife. The party going into court is usually somewhat more innocent than the other. Therefore the husband more often destroys the marriage tie than the wife; certainly he is more likely to commit those overt acts on which a suit for divorce must usually be based.

Law is for the protection of the weak against the strong through the superior strength of numbers, *i. e.*, the community. But weakness may be beyond the effective protection of law. A modicum of knowledge and courage is necessary, or law is of no avail. Seldom can the police effectively restrain parental

abuse, and the submissiveness of negroes has foiled many an effort at interference on their behalf. In some parts of the country, and some classes of society, a wife's relation to a husband is that of a child to a parent, or a servant to a master, much more than of an equal to an equal. Public opinion, her early training, dread of notoriety and the lack of all means of support apart from her husband, compel her to endure wrongs and ill-treatment to which the ear of the judge would be open. The purpose of the divorce law is thwarted. Hence the number of divorces decreed may be no more a test of the wrongs endured by wives, than the number of parents punished for cruelty to children is a criterion of the abuse the latter suffer. Divorces to wives measure their resistance, not their burdens. Southern wives are probably more resigned and submissive than northern, and, in accordance with this, the Report shows that they are less inclined to seek a divorce. In seven southern states, less than half the divorces are granted to the wife, and in the whole sixteen the ratio is only 55.4, while in thirty northern and western states and territories 69.2 per cent. are granted to women. The social conditions of Canada in this respect resemble those of our southern states. Of 135 divorces granted there in twenty years, only 49 per cent. were issued at suit of the wife. If the number of divorces granted in this country to the husband had been unchanged, 112,540, but those granted to wives had remained through the twenty years at the southern ratio, 55.4 per cent. of the whole, the total number would have been 251,776, instead of 318,716, and the number granted to northern women 95,240, instead of 172,183. The differences between the various states and territories in this regard may best be indicated by the following table computed from the figures in the report [p. 170.]

TABLE VIII

Percentage of Divorces to Wife in States and Territories (1867-1886)

North Carolina	39.3	New York	62.6	Massachusetts	69.5
Mississippi	40.0	New Jersey	62.9	Michigan	69.9
Alabama	42.5	Missouri	64.6	Connecticut	70.6
Virginia	43.9	New Mexico	65.1	Maine	70.7
South Carolina	45.4	<i>United States</i>	65.8	Indiana	71.0
Florida	45.8	New Hampshire	65.9	Washington	71.1
West Virginia	48.0	Pennsylvania	66.5	District of Columbia	72.1
Georgia	51.8	Arizona	66.7	Ohio	72.2
Arkansas	52.4	Colorado	67.0	Oregon	72.5
Texas	55.4	Wisconsin	67.4	Idaho	72.6
<i>Utah</i> *	55.4	Nebraska	68.3	Utah *	74.1
Louisiana	56.2	Iowa	68.4	Montana	74.8
Dakota	57.1	Minnesota	68.5	California	75.3
Kentucky	58.8	Wyoming	68.8	Rhode Island	77.6
Maryland	60.4	Illinois	68.8	Nevada	77.9
Tennessee	61.2	Vermont	69.2		
Delaware	62.3	Kansas	69.3		

The average length of marriages ending in a divorce granted to the wife is somewhat greater than of those where the divorce is granted to the husband [p. 182.] In other words, wives show a little more patience and long-suffering than husbands. The difference, however, is but trifling, three-tenths of a year, and even this is not found all over the country. Of the eighteen states and territories west of the Mississippi, all but Missouri, Nevada and Utah have a shorter average interval between marriage and divorce in cases where the wife is the complainant. On the other hand, of the twenty-seven states east of that river, including Louisiana, Minnesota and the District of Columbia, twenty-one show a longer duration of marriage when divorce is decreed to the wife. The six exceptions are three states in the southeast, Georgia, Florida and Alabama, two in the northwest, Michigan and Wisconsin, and one in the northeast, Rhode Island [pp. 605-769.] The Mississippi, then, divides the country into two belts, an eastern, where suffering wives

* From 1875 to 1879 hundreds of divorces for non-resident eastern parties were granted in Utah (compare § 28). Most of these, fully seven-tenths, were to the husband. Hence the true position of Utah is found by neglecting the figures for those four years, and computing the percentage from the other sixteen.

show a little more patience than husbands, and a western, where the reverse is true.

§ 20. *Distribution among the Several States*

The divorce-rates of the states given in the table below have been computed as follows. The number of divorces in 1870 and 1880 was determined by averaging the figures for the seven years, 1867-73 and 1877-83; this average was divided in each case by the estimated number of married couples in the state for that year, and the decimal thus obtained was multiplied by 100,000. The result obviously expresses the number of divorces annually to 100,000 couples.

TABLE IX

Divorce-rate of the States in 1870 and 1880

1870		
South Carolina	3	Minnesota 111
New Mexico	10	Texas 113
North Carolina	15	District of Columbia. 123
Louisiana	26	Florida 124
Virginia	33	Arkansas 130
New Jersey	47	Dakota 132
Alabama	56	Tennessee 133
Delaware	57	Massachusetts 133
Georgia	58	Kentucky 148
Maryland	60	Missouri 153
Mississippi	65	United States 155
Arizona	76	Nebraska 169
New York	86	Ohio 196
West Virginia	95	Wisconsin 202
Pennsylvania	96	Michigan 253
		Kansas 257
		Vermont 263
		Iowa 264
		Illinois 274
		New Hampshire 280
		California 289
		Maine 326
		Indiana 349
		Colorado 371
		Idaho 376
		Montana 448
		Connecticut 453
		Oregon 460
		Rhode Island 470
		Washington 525
		Wyoming 528
		Utah 584
		Nevada 611

1880

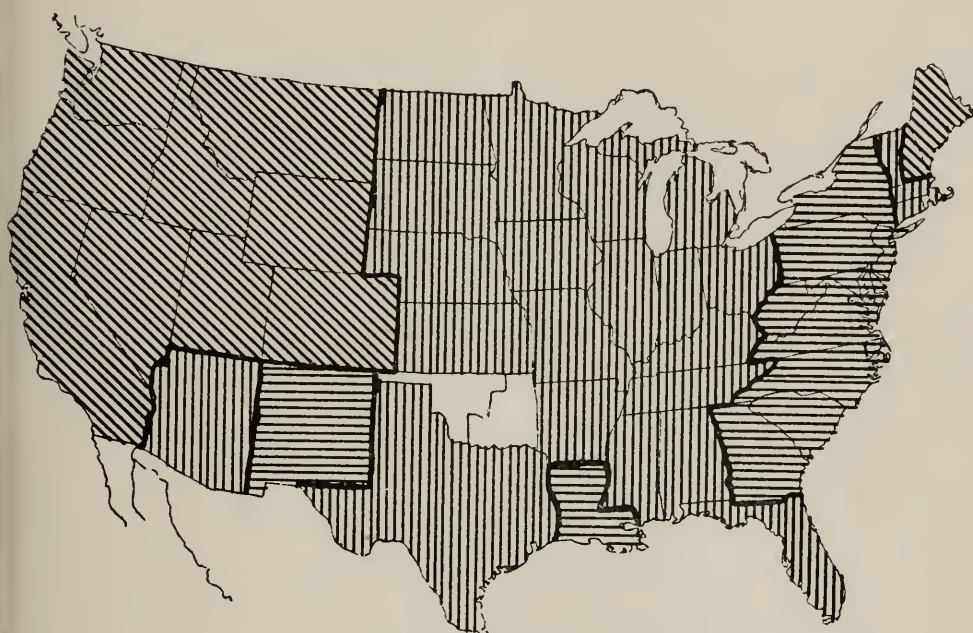
South Carolina . . .	5	Alabama	143	<i>Maine</i>	399
North Carolina . . .	30	Minnesota	145	Idaho	433
Virginia	58	Mississippi	157	<i>New Hampshire</i> . . .	439
Delaware	60	<i>Massachusetts</i>	161	Washington	441
Maryland	64	<i>Dist. of Columbia</i> . .	177	California	459
New Jersey	68	Kentucky	188	<i>Rhode Island</i>	476
<i>Louisiana</i>	75	Tennessee	191	Oregon	538
Georgia	77	<i>United States</i>	203	Utah	543
New York	81	Missouri	216	Nevada	606
<i>New Mexico</i>	81	Wisconsin	218	Wyoming	633
Pennsylvania	111	Kansas	235	Montana	685
West Virginia	130	Nebraska	235	Colorado	781
		Ohio	249		
		<i>Vermont</i>	260		
		Texas	263		
		<i>Arizona</i>	276		
		Arkansas	270		
		<i>Florida</i>	287		
		Dakota	294		
		Iowa	316		
		<i>Connecticut</i>	333		
		Illinois	357		
		Indiana	369		
		Michigan	379		

The returns from Louisiana and Idaho are unusually incomplete [p. 131.] No report was received from counties containing about one-fourth the population of the former and one-fifth that of the latter. In the table for 1880 a correction has been made by assuming that the rate in these counties was the same as the average for the rest of the state.

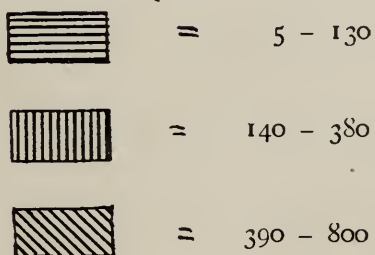
The breaking up of each table into three irregular columns has a purpose. It aims to attract attention to an important conclusion indicated by the table. Divorce is distributed over the country along geographical lines. The division is not made by parallels of latitude into north and south. The lines of cleavage in this case are the two great mountain systems of the country dividing the states into Atlantic, Pacific and central. This division is made more apparent to the eye by the map on the opposite page, in which the three groups correspond to the three columns of the table for 1880. Divorce is most common on the Pacific, least common on the Atlantic. Observe that the first column includes the seventeen Atlantic

DIVORCE-RATE BY STATES IN 1880.

(COMPARE TABLE IX.)



Divorces annually to 100,000 married couples.



states, except Florida, the District of Columbia and the six in New England; the second, the eighteen central states, except Louisiana; the third, the eleven Rocky Mountain and Pacific coast states except the two Spanish American territories. The great exception is found in the six states of New England. They show more divorce than would be expected from their geographical position. Compare the two tables, however, and it will be seen that every one of them but New Hampshire has ascended in the scale and drawn nearer the group to which it geographically belongs. However, it must be admitted that they constitute an exception to the general division, which may find a deeper explanation in the characteristics of New England blood. Look for a moment at the other deviations from the rule.

The Catholic influence may contribute to explain the freedom from divorce in Louisiana, New Mexico and Arizona. The District of Columbia is really a city; about 83 per cent. of its population is urban, and it only confirms the general theory of the influence of urban life to find the divorce rate in the District nearly three times that of the adjacent states, Maryland and Virginia. Hence this exception is merely apparent. The Rhode Island rate, higher than that of any other state east of the Rocky Mountains, may find a partial explanation in a similar fact. That state has a proportion of urban population (77 per cent.) larger than any other.

Since the war there has been a large migration to Florida from the north, which may have exerted an influence on the divorce rate there. A slight statistical indication that this conjecture is correct may be found by comparing the place of marriage of the divorced parties in Georgia, Florida and Alabama. Fifteen per cent. of the Florida divorces were granted to parties married elsewhere; only 5 per cent. were granted to such parties in Georgia and Alabama, and nearly all of these latter came from adjacent states, only about 1 per cent. coming from a greater distance. In Florida, on the con-

trary, about 11 per cent. were granted to parties married either in a non-adjacent state or in a foreign country.

Neglecting the eleven exceptions italicized in the table, the Atlantic coast state with highest divorce rate has less than the central state with least, and the central state with most has less than the western state with least. It will also be evident from the map that there are no abrupt transitions between adjoining states or territories. Colorado belonging to the third group and New Mexico belonging to the first constitute the only exception. In every other case a state or territory belonging to the first or third group is surrounded by others of its own or the second group. The division is so regular and clear that the question at once arises, what is the cause? Is any explanation to be found in the different systems of legislation in vogue in the three belts? The query is but a phase of the larger problem: What is the influence of legislation on divorce? In this form it will constitute the subject of the second part.

PART II

INFLUENCE OF LEGISLATION ON DIVORCE

§ 21. *Problem and Method*

Law and other causes influence the divorce-rate. Thus much is axiomatic. But when an attempt is made to go further and determine the relative influence and effect of law and any or all other causes, controversy is aroused. One party claims that law is a minor and relatively unimportant factor; another, that it is the controlling influence. Between these two views a decision must be sought. The problem is to be approached and solved in two ways. First, select states or countries with similar social and economic conditions, but very different laws, and compare their divorce-rate; do the same for states with similar laws, but different economic conditions; note whether the divorce-rate varies with the law, or with the other factors, or with neither exclusively. Secondly, examine every instance of a change in the divorce law, and observe whether it was attended by a change in the figures such as might have been produced by the law. To prove the point there must be a uniform conjunction of such changes, and it is constantly to be remembered that negative cases are far more weighty than positive. For the latter may be easily explained as mere coincidences, unless uniformity of occurrence makes any such explanation impossible.

§ 22. *Legal Causes of Divorce*

The forms of legal procedure in divorce cases are an uninviting subject of study. A large measure of uniformity in substance underlies the differences in the various states, and

there is little evidence to prove that the variations in procedure have exerted a marked influence on the divorce-rate. Consequently they will here be neglected. But with reference to the legal grounds of divorce, the matter stands otherwise. The number of these differs widely in the various states. Does the divorce-rate show corresponding variations?

As a preliminary step, the grounds must be analyzed and grouped. Like the forms of procedure, they manifest superficial variations overlying fundamental similarity. Mr. Wright has reproduced the former, and not clearly shown the latter. He enumerates forty-two grounds of absolute divorce, each in force in some part of the country, [p. 113. f] but a single elementary distinction will reduce the number materially. Divorce is the dissolution of legal marriage; if there has been no marriage, there can be no divorce. A court may declare the pretended marriage a nullity, but such an adjudication is in no strict sense divorce, although the statutes in many of the states so term it. The misuse of English by state legislatures, however, must not be permitted to obscure the difference in things, and such a designation can be retained only with a protest expressed by styling it an improper divorce. The grounds on which improper divorces are granted include such causes as certain degrees of relationship, lack of age, capacity, or consent. In not a few of the states the list of such impediments to marriage established by the common law has been extended by statute. Rather more than one-third of the forty-two grounds of absolute divorce enumerated by Mr. Wright are really grounds invalidating the marriage from the beginning. All these and the improper divorces granted for them, 2,854 for the twenty years, must be disregarded. The remaining causes may be grouped as general or local; each of the six former is admitted in more than twenty states, while each of the eight latter is confined to one or two. The number and per cent. of divorces for each cause appears in the following table:

TABLE X

Divorces in the United States (1867-1886) Classified by Causes

Total Divorces	328,716
Cause Unknown	10,315
Improper Divorces	2,854
Proper Divorces for Known Cause	315,547

General Causes

		Per cent.
Desertion	126,676	40.15
Adultery	67,686	21.45
Cruelty	51,595	16.35
Drunkenness	13,866	4.39
Neglect to Provide	7,955	2.52
Imprisonment	2,721	.86
Combination of General Causes	35,417	11.23
Total for General Causes	305,916	96.97

Local Causes

Neglect of Duty, Ohio	2,685	
Incompatibility of Temper, Utah	1,579	
Misconduct, Connecticut	454	
Voluntary Separation, Wisconsin	228	
Violent Temper, Florida	119	
Vagrancy, Missouri	50	
Supervient Insanity, Arkansas, Washington	28	
Gross Misbehavior and Wickedness, Rhode Island	6	
Total for Local Causes	5,149	1.63
Combinations of General and Local Causes	4,115	1.30
Minor Causes	367	.12
	315,547	100.05

The local causes may be dismissed with few words. Two have been repealed in the course of the twenty years, incompatibility of temper in Utah and misconduct in Connecticut. Neglect of duty in Ohio is substantially the same as neglect to provide in other states, but apparently is construed somewhat more broadly, for husbands sue on the ground of neglect of duty, while only wives have a legal claim to be provided for. On the other hand, the Kansas statute couched in the same terms is apparently construed there as synonymous with neglect to provide, and divorces are reported for the latter rather than the former cause. It is probable that most of the

4,115 divorces for a combination of general and local causes, were really granted for the former. While Connecticut, for example, reported 1,107 divorces for desertion and misconduct together, desertion must have been the effective cause of the great majority. Therefore, probably 98 per cent. of all divorces for known causes may be set to the account of the six general grounds, and to these further attention may be confined.

Each of these grounds is wide-spread, but none universally admitted, for South Carolina has no divorce law. There are forty-eight jurisdictions and systems of law in our country, exclusive of Alaska. Forty-seven allow divorces for adultery, forty-five for desertion, forty-one for cruelty, thirty-nine for imprisonment, thirty-eight for habitual drunkenness, twenty-two (including Kansas) for neglect to provide. The question now recurs, Does the distribution of causes of divorce throw any light on the geographical division stated in § 20?

§ 23. *Comparison of Number of Causes with Divorce-Rate.*

The six general causes are distributed with considerable uniformity over the central and western belts. No explanation of the different rates in these two belts can be found in any difference of causes. The only one with reference to which there is much difference, is neglect to provide. This is admitted by some states and rejected by others, but no variation of rate can be shown to result, nor is the tendency to group along geographical lines markedly affected. Indiana and Michigan admit this cause, Illinois and Iowa do not, yet the difference between their divorce-rates is very slight. Tennessee admits it, Kentucky not, but in this case the difference of rate is practically inappreciable. Comparatively little evidence is to be found in these two groups, but what there is goes to show that the differences of law in adjacent states produce slight differences in divorce-rates, being overridden by similar social and economic conditions. For in a large and general way it must be admitted that adjacent states are more similar socially than far distant ones.

The eastern belt of states, from New York to Georgia, includes all which have manifested a conservative spirit in their divorce legislation. In this belt are found South Carolina with no divorce, North Carolina and New York with only one general cause, New Jersey and Maryland with two, Virginia and West Virginia with three. These states also are the freest from divorce. Apparently, then, they show clearly the marked influence of legislation. But such a conclusion must not be too hastily drawn. These large and old states are very conservative and averse to radical changes of law. Their social and economic conditions have probably changed less than those of the other two groups. Certainly this is true of the southern half of the belt, where divorce is least frequent. So a closer examination is necessary. Let the states be arranged as below in the order of their freedom from divorce, and against each be placed the number of general causes for divorce allowed, and it will appear that there is no direct connection between the two.

States.	General causes admitted.
North Carolina	1
Virginia	3
Delaware	6
Maryland	2
New Jersey	2
Georgia	5
New York	1
Pennsylvania	4
West Virginia	3

New York, New Jersey and Pennsylvania, may be compared more closely. The New York rate is greater than New Jersey's, and only just above Pennsylvania's. This means that more divorces for adultery are granted in New York, relatively to population, than for adultery and desertion in New Jersey, and almost as many as for adultery, desertion, cruelty and imprisonment in Pennsylvania. Assume the number of married couples in the three states in 1875 to be a mean between the

estimates for 1870 and 1880, [p. 148] and compare with this mean the total number of divorces for adultery in the three states for the twenty years. [p. 169.] Pennsylvania had annually 16 such divorces to 100,000 couples, New Jersey had 26, and New York, 78. Judging from the court records one would say that adultery was about three times as frequent in New York as in New Jersey, and about five times as frequent as in Pennsylvania. No such inference is warranted. The true conclusion is that limiting the causes increases the number of divorces in those which remain, but without materially affecting the total number. A certain proportion of the married couples in the three states desired divorce and were willing to offer the evidence required in order to obtain the decree. The number of causes, then, seems to have affected the grounds urged for divorce, but in no large degree the total number.

The law of Delaware is different from that of any other state. Here alone has survived the English custom prior to 1858 of granting divorces by Act of Parliament. In most of the states and territories such private bills are forbidden, and in those where it has not been prohibited the custom has fallen into disuse. But in Delaware about 80 per cent. of the divorces are granted by the legislature, and ~~hence in theory may be for any cause.~~ The largest percentage of cases reported as for cause unknown comes from this state. The practice appears to be lax. Moreover, in addition to this apparent looseness, the Delaware courts are empowered to grant divorces for any one of the six general causes. (Even neglect to provide there is recognized as a ground, although not admitted in any other state of the eastern belt. We should expect accordingly to find divorce frequent in Delaware. But the opposite is true.) The state ranks above its immediate neighbors, Maryland and New Jersey, and but very slightly below Virginia, while it has only about half the divorce-rate of Pennsylvania. On comparing the divorce rate for adultery alone in Delaware with that in the neighboring states, we find New

Jersey has 26, Maryland 25, but Delaware only 11 to 100,000 couples. The small number of causes in the former states seems to have had little influence on the total divorce-rate, but to have made the divorce-rate on the ground of adultery about two and one-half times as great.

The low rate of North Carolina appears at first glance connected with her one ground of divorce as effect with cause, yet even here the relation is doubtful. It may well be that she shares in the sentiment of her sister state to the south, that her public opinion likewise vigorously opposes divorce in any case, and that her rate is controlled by this opinion much more than by law.)

The three belts of states do not in any way conform to the differences in the legal grounds of divorce. Such differences are uniformly overridden. The clear tendency of states in geographical proximity to stand in juxtaposition in the table is equally unexplained by any similarity in their divorce law. Therefore law appears to be a relatively unimportant factor in the complete explanation of the diversities of divorce-rate in the states.

§ 24. *Changes of Law in the Last Score of Years*

The second method of examining statistically the influence of law on divorce is by a comparison of every change in divorce law with the figures. If a corresponding change uniformly appears, it may fairly be regarded as a direct effect. The examination must clearly be limited to the legal changes in the twenty years for which statistics are given. Mr. Wright discusses the question at some length [pp. 150-157], and is disposed to believe that the direct influence of changes of law on the figures may be traced. "It seems quite apparent," he says, "that the lines of statistics are curved in accordance with laws enacted just prior to the curves," and he enumerates fourteen cases of synchronous changes of law and figures, in which the former "may account" for the latter. These are not the only changes of law, be it observed, for he alludes to others which

presumably were not attended by a change of figures. He gives no clue to their number; but the importance of these negative cases is quite as great as that of the positive, and their existence must be regarded in balancing the evidence. The figures change so constantly and greatly, that an occasional coincidence between a new law and a corresponding change of statistics would be almost inevitable.

A fundamental oversight is made in this part of Mr. Wright's discussion. A change of the law is found to coincide with a change in the total of divorces for the state, and the two are forthwith correlated, regardless of the fact that very few changes of law can have affected all causes of divorce equally. To establish a connection between the two as even probable, the change in the number of divorces must be shown to occur solely or mainly in the classes affected by the law. A statute making habitual drunkenness a ground of divorce may be attended by an increase in the total, but the two facts are not proved to stand in relation, until the increase is shown to be solely or largely in divorces granted for drunkenness. A law shortening the requisite period of desertion cannot have increased the divorces for adultery, nor can a law making cruelty a cause have increased the divorces for desertion. Equipped with this simple touchstone, let us examine the fourteen cases given in the Report as instances and proofs of a change of law causing a change in the figures. They may be grouped as follows: two introductions of new causes, South Carolina and Alabama; two repeals of causes, South Carolina and Connecticut; five modifications of causes or procedure, Dakota, West Virginia, Massachusetts, and two in Vermont; five more complex changes, Maine, Indiana, Mississippi, Colorado and Utah.

§ 25. *Changes introducing Causes*

South Carolina passed a law in 1872 allowing its courts to grant divorces. From the fact that 98 per cent. of those granted involve either adultery or desertion, [p. 738] we infer that these were the grounds admitted. The figures show noth-

ing like a rush to the courts for relief. They increased slowly and irregularly for seven years, and at the end of the period had risen only to 39, while the annual average was 25.

Alabama introduced habitual drunkenness as a ground of divorce in 1870. Another law of uncertain significance, passed the same year, was repealed in 1893, and Mr. Wright thinks the two "would perhaps account for the increase of divorce from 1870 to 1873." That increase was 29; the increase of divorces for drunkenness was 1. No divorces for this cause were reported in 1870, and 1 in 1873. If all the cases in any way involving drunkenness as contributing cause be included, the argument is not materially strengthened. Such cases show an increase of 3, from 2 to 5. Nor are the two years exceptional. The figures for a decade only confirm the conclusion. They are given below, the vertical line marking the change of law:

	'67	'68	'69	'70		'71	'72	'73	'74	'75	'76
Drunkenness alone . . .	0	0	0	0		0	2	1	1	1	1
Drunkenness and other causes	4	3	3	2		0	6	5	3	2	5

The total increase in Alabama for the decade was 105. What influence did this law have in causing it?

§ 26. *Changes repealing Causes*

The effect of increasing the facilities for divorce may be gradual; the effect of diminishing them must be immediate. The community may be slow in learning that the door has been opened more widely, but if it be swung shut a little, some are excluded from the start, or the effect is nil. Therefore a decrease of divorce beginning two or three years after the passage of a restrictive law cannot be set down to its agency. South Carolina illustrates the difference between the two kinds of legislation. The slow increase for seven years has been mentioned, but when divorce was prohibited in 1878 the number fell to nothing at once.

Connecticut affords the only other example of a simple re-

peal of a cause. The law in that state permitting divorce for "any such misconduct as permanently destroys the happiness of the petitioner and defeats the purpose of the marriage relation," was repealed in 1878. The repeal was approved in March, but the number of divorces for that year was the same as for the year before, 412. It might be said that the law checked the increase in Connecticut, and it is true that there had been an increase of 32 the year before, but this was exceptional, and for two years before that the decrease had been marked. Here are the figures:

'74	'75	'76	'77	'78	'79	'80	'81	'82	'83	'84	'85	'86
531	498	380	412	412	325	346	428	401	423	344	398	420

Is any influence of the law here discernible? To be sure there is a considerable decrease, 21 per cent., a year later, but this is almost matched by the decrease of 19 per cent. in 1884, and considerably surpassed by that of 1876, 24 per cent., although in neither case was there a change of law. And the diminution comes too late to find a clear explanation in the legal change.

The transfer of divorces on the ground of misconduct into other categories may be set forth as follows:

	1877	1878	1879	1880	1881	1882
Divorces involving misconduct .	242	143	25	3	1	0
All others	170	269	300	343	427	401
	412	412	325	346	428	401

The law immediately diminished the divorces for misconduct with or without other causes by 99, but there are just 99 more for other causes. It cannot be admitted that "the decrease is sufficient to show the influence" of the change of law.

§ 27. *Modification of Causes or Procedure*

Dakota in 1881 reduced the time necessary as basis for a complaint for desertion from two years to one, and the figures are here given:

	1878	1879	1880	1881	1882	1883	1884
Divorces involving desertion .	8	18	35	30	74	85	98
All others	9	12	37	47	49	68	74

The increase is clearly perceptible, but not very permanent. The conditions in that case changed so rapidly in these years that inferences are somewhat unsafe, but whatever weight is given to the instance should probably lie in favor of Mr. Wright's view.

West Virginia passed a law in March, 1882, requiring residence for a year previous to filing suit. Prior to that date residence at the time had been sufficient. Divorces diminished from 204 to 176. The law was evidently aimed at divorces to non-residents, and the true measure of its influence must be found in the diminution of such divorces. The only datum is the number of divorces to parties married outside the state. Those married and divorced in West Virginia probably lived there in the interim. Now the divorces to parties married in that state diminished 13 per cent., while those to persons married elsewhere diminished $13\frac{1}{2}$ per cent. Mr. Wright ingeniously suggests that the increase the year previous may be accounted for by the general knowledge that such a law was under discussion, so that cases were hurried through to take advantage of the laxer provision. This is sufficiently answered by noting that the divorces of parties married in West Virginia increased 104 per cent. that year, while those of parties married elsewhere increased 69 per cent. In this state, then, no influence of legislation is traceable.

Vermont made a like change in January, 1879. Divorce was refused to parties who had never lived together in that state, and restrictions were imposed upon divorce for causes arising outside. The decrease for which this legislation is assumed to account proves on analysis to be a decrease of 36 per cent. in divorces of Vermont marriages and a decrease of only 26 per cent. in those of marriages solemnized elsewhere.

A second amendment in 1884 aimed to secure the presence

of the defendant by compulsion if necessary. This was attended by a marked decrease in all the causes, but whether the relation was other than a coincidence cannot be statistically determined.

Massachusetts in 1873 reduced the time of desertion necessary to give ground for divorce from five years to three, and in 1875 raised it again. Mr. Wright says, "probably the large number in 1874 was due to" this change. The total increased from 337 in 1872 to 611 in 1874, but, unfortunately for Mr. Wright's position, the increase under the head of desertion was only 69 per cent., while in those not involving this cause the increase was 92 per cent. Again the hypothesis fails.¹

§ 28. *More Complex Changes*

Maine amended its law in 1883 by forbidding the parties to marry within two years after the decree, and withdrawing authority from a Justice of the Supreme Court to decree a divorce "when in the exercise of a sound discretion he deems it reasonable and proper." The change was attended by a sudden and marked decrease in all causes. A tendency to revive followed, but the rate did not reach its former proportions.

Mississippi relaxed her law in three directions in 1871. Habitual drunkenness and cruelty were made grounds, and the period of desertion required was diminished one year. The results are expressed in this table:

Divorces for	1867	1868	1869	1870	1871	1872	1873	1874	1875	1876
Desertion	22	30	26	27	32	68	67	91	66	82
Drunkenness	0	1	1	0	0	1	4	3	1	4
Cruelty	1	0	2	1	2	12	15	9	20	15
Other grounds	26	28	46	57	71	79	83	73	84	71
Total	49	59	75	85	105	170	169	176	171	172

The increase for the single year was marked, more than twice as great as for any previous year, but it then stopped almost entirely.

¹ But compare *Political Science Quarterly*, Vol. VIII, p. 88-90.

Indiana introduced several amendments in 1873. One, a repeal of the clause, "for any other cause the court deems proper," resulted in an immediate, marked and permanent decrease in the number of divorces reported as decreed for "cause unknown." When the judge was deprived of this discretionary power he became bound to refuse a petition, unless the case was brought under some statute.

The other changes fixed at two years the duration of "desertion and neglect to provide" requisite for a divorce. The suits involving these causes diminished 24 per cent., others 17 per cent.; but the former began immediately to increase more rapidly than the latter, so that in 1875 they were 5 per cent. below the number in 1872; those for all other causes were then 3 per cent. below.

(Colorado has a unique law upon desertion. The general provision of the frontier states allowing divorce for desertion continued one year is supplemented there by a law allowing it on this ground when husband or wife has left the state without intention of returning. Originally this law was in favor of the wife only, but in 1881 its privileges were extended to a deserted husband. The result of such a change would naturally be to increase the divorces for desertion granted to husbands; but as a matter of fact, those to wives increased more rapidly. So this change was of no perceptible effect.

Two others made at the same time introduced the cause, neglect to provide, and changed the duration of habitual drunkenness necessary; but the increase under these two heads was only 18, while the total increase was 112. Therefore, the legal changes in Colorado had little influence on the increase.

(The last and most interesting case is Utah. That territory had a very lax law, but until 1875 not a large number of divorces. In that year divorce lawyers in New York, Cincinnati and Chicago began to avail themselves of the opportunity thus afforded, and to hurry eastern divorces through the Utah courts. Statements of an intention to take residence in Utah were

enough to establish jurisdiction, and affidavits of incompatibility of temper, to justify a decree. This continued for four years, when the Utah law was amended, *bona fide* residence for a year before the commencement of proceedings was required, and the incompatibility of temper clause repealed. The apparent influence of this legislation is shown in the following figures giving the annual number of divorces for nine years :

'72	'73	'74		'75	'76	'77	'78		'79	'80
100	134	149		295	709	914	298		122	115

It seems on the face of the figures that here was a reduction of about 800 divorces a year caused by the change of the law. But was it really so? These divorces from eastern cities were sent to Utah, because that was the line of least resistance. When that channel was closed, the current may have returned to its original bed and flowed through the courts of those cities. If this hypothesis is correct, there should be during the period of numerous Utah divorces a decrease in the divorces of these eastern cities, followed by an increase when the law of that territory was amended. The following table has been constructed to test the hypothesis :

	Annual aver- age 1871-74.	Annual aver- age 1875-78.	Annual aver- age 1879-82.	Annual aver- age 1883-86.
Chicago	468	342	603	722
New York city . .	217	164	239	252
Utah (divorces of persons married in a distant state) . .	21	390	19	15

Unfortunately the Cincinnati records were destroyed in 1884, but it can hardly be doubted that these figures complement each other. This becomes still clearer when it is found that the rest of Illinois and the rest of New York maintained a steady increase through these sixteen years. The corresponding averages for the rest of Illinois are 1,248, 1,333, 1,568, 1,722, and for the rest of New York, 435, 464, 604, 692. Possibly a rough measure of the number of divorces deflected from these cities may be obtained as follows: Assume the

real number of divorces to Chicago and New York parties for 1875-78 to have been a mean between the given numbers before and after, *i. e.* 536 and 228. The sum of these numbers is 258 less than the sum of the numbers in the table. Obviously about 400 divorces annually went to Utah from the East; and here are approximately 250 accounted for in these two cities, leaving about 150 for Cincinnati and other places. The efficacy of this law in reducing the total of divorces for the whole country is made doubtful as soon as the facts are scrutinized with care.

The result of the examination of the fourteen test cases selected by Mr. Wright may be briefly recapitulated. Five, Alabama, Connecticut, West Virginia, Vermont (law of 1878), and Massachusetts, are to be unconditionally rejected; five others, Mississippi, Indiana, South Carolina (law of 1872), Colorado and Utah indicate a slight, temporary, or questionable influence of legislation; two, Maine and Vermont (law of 1884), are not subject to closer determination from the figures; and in only two, Dakota and the repeal of the divorce law by South Carolina in 1878, is there clear evidence of a considerable influence on the figures. The former might be explained either as a mere coincidence or by reference to the very great increase of population in that state in that year, making a marked increase of divorce natural, and the case of Utah might be considered as throwing light on that of South Carolina. It is indeed possible that some of the 25 divorces a year, shut off in that state in 1878, appeared in adjoining states, but neither of these explanations is satisfactory. Yet after giving due weight to these exceptions it must be admitted that the influence of law, if not nil, is at least much less than commonly supposed.

§ 29. *European changes from Separation to Divorce*

One objection may still be urged. Other states, it may be said, have not been in earnest; they have been content with make-shifts. South Carolina alone has courageously gone to the root of the matter, and her legislation has been a success.

The true inference is, follow her example, strike deep and hard, and the blow will tell. Few are bold enough to advocate a repeal of all divorce laws, but a large number urge a return to the policy of the Catholic church, refusing in all cases the right of remarriage. The postulate on which this argument rests, that people divorce in order to remarry, has already been discredited (§ 13), but the effect of such legislation on divorce demands statement here. No American state has made the change; therefore, it is necessary to resort to European statistics. After Alsace-Lorraine was annexed to the German empire, the German divorce law was introduced in 1874. Prior to that time the French law had allowed only separation, without the privilege of remarrying. But this change of law did not result in a marked increase of suits.* The figures for 1870-73 are lacking, but the following, taken mainly from Bertillon, indicate how little the regular increase from 1850 to 1886 was affected by the change in 1874:

Separations or divorces to 1000 marriages .	{ 1851-55	'56-'60	'61-'65	'66-'69	'70-'73	'74-'75	
	2.25	2.48	2.89	3.83	wanting	4.52	
	{ '76-'80	'81	'82	'83	'84	'85	'86
	6.80	10.3	11.3	12.6	12.1	13.3	11.1

Divorce has increased with considerable rapidity in Alsace-Lorraine, but so has separation elsewhere; and that increase has been especially rapid since 1871 in all parts of the Continent. The change from separation to divorce, however, did not much accelerate the increase.

The experience of France seems to prove the opposite. Divorce was introduced in 1884, and the number rose from 3000 separations *per annum* to 6000 divorces. This is a marked instance of the influence of legislation on divorce. But it is not in conflict with the views of the party which holds law to be a minor factor. Indeed, the result was predicted by Bertillon in his book published to advocate the French law. He also predicted that the divorce rate would gradually diminish until it was near the rate of separation before the law, and then

slowly increase. It is too soon to state whether this prediction also will be verified, but the reasoning on which it is based is clear. A large number of couples in France as everywhere are living in estrangement and separation. Some have formed new and illegal unions. Some have obtained a decree of separation, but as this would not legalize a second marriage, others have deemed it a superfluity. Then a divorce law is passed, and thousands who have already obtained a separation have the decree converted into a divorce; other thousands now see a reason for going to court where before none existed. After a few years this current will cease; all who have long desired a divorce will have obtained it, and only the new cases will be carried into court.

Divorce was introduced into France by the Revolution, modified by the Code Napoleon, abrogated at the Restoration. The statistics for so early in the century as 1816 are not very trustworthy, but they indicate no marked decrease of litigation as a result of the transition from divorce to separation. On the contrary, from 1811 to 1816 there were 72 divorces to 100,000 marriages; from 1816 to 1819 there were 75 separations to 100,000 marriages.

The slight influence of legislation may be exhibited more clearly by comparing Belgium with France. The Code Napoleon was introduced into the former country early in the century, and has remained in force ever since. Divorce and separation are both admitted, and divorce by mutual consent allowed. Until the recent amendment of her law, France allowed only separation, and that not by mutual consent. The two countries are quite similar in their religion and general conditions. Yet for the decade 1872-81 to every 100,000 couples Belgium had only 24 divorces and separations combined, while France had 33 separations.¹ Or, if a fairer comparison be made between Belgium and the two departments of French Flanders just over the border, and most similar to

¹ *Die Bewegung der Bevölkerung in der Schweiz im Jahre 1885, Beilage I.*

Belgium in all respects, the result is that in each there were five legal decrees to 1000 marriages, although in France the decrees were for separation, and in Belgium for either. That is, after living for three-quarters of a century under laws as totally different as the Catholic and Protestant theories, the two regions are found to have an identical rate. Can it longer be doubted that a return to the policy of separation without permission to remarry would not solve our problem?

§ 30. *Laws affecting the Expense of Divorce*

The most efficient means of reducing the number of divorces by law is to make them expensive. The evidence demanded will be furnished, but the money may not. The English law illustrates this. Prior to 1858 divorces were granted only by Parliament, the House of Lords sitting as a court. The expense was enormous, probably some thousands of dollars, for two suits at law must be won by the plaintiff before a hearing was given in Parliament. The much-discussed divorce law of 1857 simply created a court to decide the cases more rapidly and inexpensively. The procedure was substantially the same, the causes for which divorces were granted were unaltered; and the reason that divorces have increased to some hundreds a year, when before only one or two were granted, must be found in the difference of expense. Yet even now, with only one court for England and Wales, the cost of carrying a suit through must be some hundred dollars at least, and in this may be found the fundamental reason for the small number of divorces in that country.

France has pursued the opposite policy. A law was passed in 1851 allowing those unable to pay the expense of a suit for separation, to plead without cost. It resulted in a marked increase in the number of applications.

The obvious objections to having one system of law for the rich and another for the poor, make discussion of this method of restricting divorce unnecessary.

§ 31. *The Uniform Law in Switzerland*

Uniform laws on divorce are needed in the United States, but so are uniform laws on bills and notes and various other subjects. The divorce problem would hardly be touched by uniformity. The present differences between the states would continue to exist almost unaffected. As they were not created by law, so they cannot be abolished by law. If the reader be not already persuaded, the example of Switzerland may convince him. That country is remarkably like our own in its divorce-rate, but the differences between its cantons are greater than those between our states. Formerly, each canton controlled the subjects of marriage and divorce, but in 1874 the Constitution was revised and the Federal authorities empowered to pass a national marriage and divorce law. Such a law went into effect January 1, 1876, and a recent volume of Swiss statistics summarizes the results of ten years of the new law. The differences between the cantons have been very slightly affected thereby. The following table, based on those results, may profitably be compared with table IX., § 20, the basis of the two being the same.

TABLE XI

*Divorce-Rate of Swiss Cantons under Uniform National Law for
Decade 1876-1885*

Unterwalden o. d. W. 9	Zug. 83	St. Gall 245
Uri 10	Grisons 115	Thurgau. 326
Valais 15	Basel, country . . . 159	Geneva 336
Ticino 22	Aargau 162	Schaffhausen. . . . 336
Uterwalden n. d. W. 24	Solothurn 168	Glarus 339
Schwyz 42	Vaud 180	Zurich 379
Lucerne 62	Basel, city 193	Appenzell, Outer
Freiburg 66	Neufchatel. 198	Rhodes 440
Appenzell, Inner	Switzerland 208	
Rhodes 71	Berne 223	

After ten years of a uniform law, Appenzell, Outer Rhodes, has forty-nine times as much divorce as Unterwalden o. d. W., while with all the divergences of law in this country the differences of rate are much less.

¹ Compiled from *Die Bewegung der Bevölkerung in der Schweiz im Jahre 1885. Beilage 1.*

§ 32. *Legal Restrictions upon Marriage*

Certain students of the divorce problem have advocated restrictions by law upon early or improvident marriage. For example, Prof. Robinson of Yale University Law School, says:¹ "No person should be marriageable under the age of 21, and a marriage ceremony celebrated between persons either of whom is under age should be *ipso facto* void."

Four thousand eight hundred and fifty-five husbands or wives under the age of twenty were living in Massachusetts in 1885. To these must be added a large and indeterminate number of married persons between twenty and twenty-one, in order to ascertain the number of marriages which would be declared void by such a law as is proposed. How large a proportion of these nearly ten thousand people (for in the great majority of instances only one of the two is under twenty-one), would have remained virtuous and continent in the face of a law forbidding marriage? Each reader must judge for himself, but the experience of Bavaria may aid him in forming a conclusion.

In that country the local authorities were empowered to refuse marriage to such as could not give reasonable evidence of ability to support a family, in short to paupers. The number of marriages in a year decreased rapidly, but parallel with this decrease went a large increase in the number of illegitimate births, until they reached a total of nearly one-fourth the births in the kingdom. Disturbed by this result, the legislature changed the law in 1861, and at last entirely repealed it. The annual number of marriages leaped at once from 38,000 to 59,000, and remained abnormally high for several years, thus proving the number of persons who were glad to marry when the law allowed. Simultaneously with this came a marked decrease in the number of illegitimate births. Similar results have been obtained elsewhere. Therefore legal restrictions upon marriage cannot be deemed a satisfactory method of checking divorce.

¹ The Diagnostics of Divorce, *Journal of Social Science* (Am. Ass.), xiv. (1881), p. 136.

§ 33. *Summary of Results*

The proposed modes of reducing divorce by law may be grouped as restrictions on marriage, restrictions on divorce, restrictions on remarriage.

Restrictions on marriage reduce the number of marriages, and thus ultimately the number of divorces. By excluding the poorest or lowest classes they may do this, not only in comparison with the population, but even in comparison with the married couples. The attendant evils are so great, nevertheless, as to make such restrictions unwise.

Restrictions on remarriage would not materially reduce the number of divorces. The statistical evidence obtainable indicates that divorces are not sought in order to remarry. All the objections to restrictions on marriage weigh with equal force against restrictions of this class. Furthermore, countries which have similar conditions but different laws on remarriage, present rates of divorce or separation practically identical.

Restrictions on divorce exert a minor influence on the rate. The three belts are not explained by differences of law; similarity of conditions and of public sentiment rides roughshod over diversities of statute in our own adjacent states, while in Switzerland diversities of condition hide any effects of a uniform law. The single efficient means of reducing divorce by law, neglecting as unadvisable and impracticable the South Carolina method, is to make it expensive. This is open to all the objections against restrictions on marriage. It makes one law for the rich and another for the poor.

The conclusion of the whole matter is that law can do little. Agitation for the change of law may educate public opinion. It may even be the most efficient and powerful means of education. Such effects no statistics can measure, and, therefore, in a paper like this the educative influences of law must be neglected, but the immediate, direct and measurable influence of legislation is subsidiary, unimportant, almost imperceptible.

PART III

CAUSES AND REMEDY.

§ 34. *Basis and Character of Conclusions*

In so complex a social phenomenon as this, the course of statistical induction is short, and its limit soon reached. While following it, however, opinions may gradually develop, which the statistical method can neither justify nor disprove, and a few, that have been formed in the course of the present study, will be appended here. Some are hardly more than hypotheses to be verified, modified or retracted on further investigation; others, perhaps, may rank as probabilities; but all alike are offered merely as suggestions.

§ 35. *Two Conceptions of Marriage Law*

A fundamental antithesis underlies the marriage laws of the Christian world. How far the antithesis is really one of race between Teuton and Celt, it would be hard to decide. Ordinarily it is treated as one of religion between Catholic and Protestant.

The Catholic theory is that marriage law should recognize and embody a moral or religious ideal, unmodified by consideration of the needs and moral condition of the community to which the law applies.¹ This may be termed the idealistic theory.

The realistic theory of Protestantism lays stress on the moral standards of the community, and finds difficulty in solving the divorce problem with a simple, "Thus saith the Lord."

The different conceptions of marriage law may be illustrated by the different treatment of celibacy in southern and northern

¹ "To the question then, 'Can divorce from the bond of marriage ever be allowed?' the Catholic can only answer No. And for this No his first and last and best reason can be but this: '*Thus saith the Lord.*'"—*Cardinal Gibbons*, No. Am. 149: 519.

Europe. Celibacy may be a moral duty for certain natures. In that belief the Catholic Church has attempted to enforce the fulfilment of vows of continence with legal pains and penalties. Protestantism admits that celibacy may be sometimes a duty, but insists that the attempt to enforce it by law is not beneficial or wise. Only at times of special enthusiasm can the sexual instinct be permanently repressed. For such times the law is not necessary, and during the intervals between them it is injurious.

Similarly, the moral or religious ideal of marriage is a life-long union between man and wife. Yet, as a matter of fact, the union does terminate and all relations between the parties cease. Whether the law shall recognize this *de facto* termination of marriage depends upon the conception of the function of law held by the community. If that function be to hold up an ideal, no falling short of the ideal can be admitted. Now the point here made is that since the Reformation the realistic view of marriage law has been constantly supplanting or modifying the idealistic. Whether this change has been attended by the lowering of the social ideal of marriage, would be hard to decide; but it certainly has exerted much influence on the spread of divorce, the legal recognition of the termination of a marriage.

§ 36. *The Popularization of Law*

During the Middle Ages law was a personal privilege. For centuries legal forms of procedure continued so intricate and expensive that the benefits of law accrued only to the wise or wealthy. Along with the extension of the suffrage in modern times has come an almost equal extension of legal privileges. Whole classes have been admitted to court that were formerly excluded by the efficient practical prohibitions of ignorance and poverty. The change in the position of the negro, effected by his emancipation, is but a single striking illustration of what has been going on constantly as a result, on the one hand, of laws simplifying procedure and diminishing the ex-

pense of litigation, and, on the other, of the better education of the community in matters of law. This education is conducted largely by the newspaper press of the country. Many a man would live in ignorance that such a thing as divorce existed, were it not for the conspicuous mention of trials in his morning paper. Thus the law has become a weapon of offence or defence for a very much larger part of the population than could use it even so recently as fifty years ago. In considering the rate of increase estimated from the figures, (§§ 3-11,) this must be borne carefully in mind.

Imagine society as a huge pyramid in which the position of each individual is determined by his knowledge and wealth. Imagine a horizontal plane intersecting the pyramid to represent the divorce law of the community, and all persons above the plane to possess so much knowledge and money that divorce is to them a theoretical possibility, while to those below it is not. If the plane be motionless, the rate of increase of divorce may be found; but if it be gradually sinking towards the base of the pyramid, and making divorce a practical possibility to an increasing proportion of the whole population, this change must affect the calculation. Such a descent of the divorce plane has been in progress in this country, apparently, for the past twenty years. While it does not invalidate the previous conclusions, it does influence them, perhaps materially, and certainly renders untrustworthy any estimate for the future.

§ 37. *Laxity in Changing and Administering the Law*

There are three parties to every divorce suit, the husband, the wife and the public. The consent of the public to a decision usually desired by both the other parties is expressed by the judge's decree, given in conformity to the law which itself expresses, with more or less accuracy, the permanent opinion of the community. If the state be small and the population scanty, its consent is easily gained. Push the subdivision of a state to its ultimate atoms, the families, and we revert to the patriarchal period when the state and family

were identical. Then the will of the public and that of the head of the family coincided, and divorce required no sanction from a court. As society grew compact and better organized, the restraint of public opinion outside the family made itself felt, at first in the mere requirement of certain formalities, like a "bill of divorcement" or a prescribed formula. In new and sparsely settled communities, like those of our frontier states, there is an appreciable return towards the patriarchal condition. Public opinion is hardly formed, its restraint hardly felt; divorce becomes almost a personal and private matter. Judges, unrestrained by public sentiment, are lax in their decisions and legislatures in their enactments. The differences between the law of our Atlantic coast states and that of England, and between the laws of our eastern and western belts of states, illustrate the tendency to a relaxation of law manifested in all new communities. The divorce law of Canada and Australia might perhaps have been relaxed, but for the restraining influence, or the veto power of England.¹

If our common law had been under the exclusive protection of the national Congress, and not subject to modification by the states, its provisions on divorce would have changed much less; if the common law of England might have been modified by each county, the law of that country would, doubtless, be much laxer. Denmark and Switzerland have the highest divorce-rate in Europe, and Switzerland, till 1876, had separate laws for each canton.

While the direct effect of a change of law is slight and ephemeral, its importance as a register of the public sentiment of the community is very great. The public sentiment of new and small communities changes much more rapidly than that of old and large ones, and, in the last resort, that sentiment determines the number of divorces.

§ 38. *Age of Marriage*

No direct connection between the age of marriage and the

¹ Dilke, *Problems of Greater Britain*, p. 517.

liability to divorce can be made out from the statistics. Yet it seems to be the rule that the communities, in which early marriages are most common, are the freest from divorce. Thus Prince Krapotkine tells us that in Russia "the peasants for the most part marry their sons at eighteen, and their daughters at sixteen," and the Russian peasantry are perhaps, with the exception of the Irish, the least subject to divorce of any in Europe. Mr. Lecky, however, mentions "the nearly universal custom of early marriages among the Irish peasantry," as explaining their remarkable chastity.

§ 39. *The Emancipation of Women*

The emancipation of women means the attainment of such legal recognition and protection as enables them to use the law for their defence with as much readiness and freedom as do men. It involves an economic and mental independence of men, whether as fathers or as husbands. If the organization of society greatly hinders women from becoming self-supporting, the wife endures many wrongs to which the ear of the judge would be open, simply because life apart from her husband is starvation. As women become able to earn a living income this economic bond is relaxed. The effect on conjugal life is seen in the greater number of divorces granted to the wife in the northern states. (Table VIII., § 19.) Perhaps the New England woman is somewhat more emancipated, *i. e.*, more independent mentally, economically and legally, than the woman of the middle Atlantic states.

A divorced woman may gain a livelihood either from her own labor or by a second marriage. Therefore it is natural to find divorce most frequent where a woman finds it most easy to earn her bread, and also where wives are most in demand. The latter is probably the case in the trans-Mississippi states, and may serve, in part, to explain the excess of divorces in the far west (Table IX.), the very large proportion granted to wives (Table VIII.), and the fact that in those states suffering wives show less patience than husbands (§ 19).

The emancipation of women is closely related to the average age of marrying. Women marry early in those communities where no other vocation is open to them than that of the wife and mother. Only sixteen to twenty years of age when she passes out of the control of a father and mother into that of a husband, with no taste of freedom intervening, with a mind and character so unformed as easily to be brought into harmony with or submission to her husband's, with no way of escape open to her after marriage, whatever the law may say, what wonder that the peasant woman of Russia, Ireland or elsewhere, shows little inclination to divorce! Where no actual choice is offered, divorce cannot be chosen. Between the cessation of strict parental supervision and the beginning of married life, a period of some length must intervene, in order that a woman may waken to a sense of her own equality and independence. Thereafter, any marriage she may contract will be based on equality, not on subjection.

The economic emancipation of women, in the forms it has thus far assumed, is attended by an assimilation of the work of wage-earning women to that of men. Marriage, however, is fundamentally grounded on the differences, physical, intellectual and moral, between the sexes. Consequently a marriage almost invariably recognizes and emphasizes these differences through varieties of work and function. (So far as the training of the two sexes prior to marriage has been identical, one or the other must be ill fitted for that life; so far as woman's work has become masculine, her ability to make and keep a home happy is diminished. This result appears most clearly in the wage-earning population, where a girl's marriage is less often a change from one home to another, and more often a change from a factory into a home. It is in just these classes that divorce is most frequent. Some confirmation of this conclusion may be drawn from a report of the proceedings of the London divorce court quoted by Prof. Robinson.¹

¹ Diagnostics of Divorce, *Journal of Social Science* (Am. Ass.), XIV: (1881), p. 136.

"The experience of the English divorce court tends to confirm the opinion that a great deal of the misery to which the working classes are subjected in their homes arises from the inability of women, when they get married, to render their homes comfortable and attractive. In other words, a great many of the women who get married are unfit for married life."

Divorces are most frequent where women are most emancipated, and the percentage granted to the wife in such communities is excessive. For the whole country the percentage to women is increasing. In the first year, 62 per. cent., in the last, 66 per. cent., were granted to the wife.

§ 40. *Growth of Cities*

The proportion of our population living in cities of over 8000 inhabitants has nearly doubled in thirty years, rising from about 16 per cent. in 1860 to over 29 per cent. in 1890. The native urban population, so the census of Massachusetts indicates, are more prone to divorce than the same class of population in the country. Hence the massing of that population in cities at the east and north has probably influenced the divorce rate, although the effect is masked by the presence of the foreign born urban population.

§ 41. *Increase of Industrialism*

The life of the race on this planet has been divided into four stages, each distinguished from the others by a predominant manner of obtaining food. They are the hunting and fishing stage, the pastoral stage, the agricultural stage, and the industrial stage. It has been further argued that permanent monogamous marriage makes its appearance with the dawn of the agricultural stage. However that may be, it is obvious that we are in the midst of the transition from the agricultural to the industrial stage. Not that hunting, fishing, herding or farming has passed away or is likely so to do. But the distinguishing feature of the present day lies in none of these; they have existed in the past; trade, commerce and manufacturing in anything like their present importance, have not. This advance into the industrial period is apparently attended by a modifica-

tion in the relations of the sexes, and perhaps in the nature of marriage. Industrialism tends to eliminate all sexual differences except the physical ones, and to reduce even those to a minimum. It centers in cities, has grown faster and farther at the north than at the south, and perhaps faster in New England than in the middle Atlantic states.

Industrialism involves a close relation between all parts of a community. The newspaper and periodical press mediate the exchange of ideas and information, as the railway and telegraph do of material products; the knowledge that divorces are obtainable is disseminated by the former, the opportunity for cheap and easy transportation to a more inviting field of work is offered by the latter. The number of divorces granted for desertion alone is two-fifths of the whole, and nearly one-half involve this ground as principal or accessory cause. The proportion, too, of divorces for this cause has steadily risen from 34 per cent. in 1867 to 40 per cent. in 1886. The mental and economic emancipation of women has weakened the ties binding a wife to her husband; the facilities for transportation and the reports of golden harvests in California, the Black Hills or Oklahoma have increased the motives for a husband to abandon home and wife.

Industrialism involves a wider knowledge, action under more complex and changeable conditions, and thus a vastly greater mental activity. As the mental life increases, the general differences of sex and the specific differences of persons are accentuated, and the dangers of quarreling increase. A savage finds one squaw about as serviceable as another in attending to the few tasks of the wigwam; in our higher civilization dissensions ending in divorce may begin [pp. 172-178], over a curly dog, or a woman's bangs, or a man's buttons, as well as over spiritualism or religion.

This demand for higher mental life, many fail to meet; they succumb under the strain. The growth of industrialism is attended by an increase of insanity, as well as of divorce.

§42. *The Spread of Discontent*

So closely related to the growth of industrialism as hardly to deserve treatment as a separate cause, is the spread of a spirit of restless dissatisfaction. Mr. Bryce has called this "the age of discontent," and this characteristic of the time in this country and Europe manifests itself in a theoretical questioning and criticism of marriage, and, perhaps, in the weakening of its hold upon the community.

Even more characteristic of the industrial age than the increase of insanity is the increase of suicide. This is the deepest, most radical expression of discontent with the sum total of conditions constituting one's life. Every suicide involves, for the individual concerned, and practically, not theoretically, a negative answer to the question, Is life worth living? Likewise every divorce involves, for one or both of the parties, and practically an affirmative answer to the question, Is marriage a failure? Therefore, it is not surprising to find a close and constant relation between the statistics of divorce and of suicide. Both are much more common among Protestants than Catholics, in cities than in the country, among the Teutons than the Celts; and both are rapidly increasing. The rates of divorce and of suicide in the particular countries show a close and constant relation, and the proportion of suicides among divorced persons is abnormally large.

The discontent with marriage in its present form shown by the increase of divorce may be compared, not only with the discontent with life shown by suicide, but also, perhaps, with the discontent with the present organization of industry shown in strikes and combinations, and in visions of an entirely new economic organization or of an ideal socialistic state. The discontent in all its phases indicates a desire and hope of great change. For the suicide must regard even annihilation as a change and an improvement. Whether the changes will be realized or can be without a fundamental change in human nature, we need not attempt to decide; but ob-

viously the first condition of their realization is that they be desired.

§ 43. *Two Ideals of the Family*

Once before in the history of the world women have been emancipated legally and economically. In the days of the Roman empire wives were given by law and by custom greater freedom than ever before; but they gained it by the sacrifice of family life, and under a theory that a wife was a member, not of her husband's, but of her father's household. The legal emancipation of women was attended by a loosening of the ties between husband and wife, a disregard of marriage vows, the moral degradation of the sex and of the community. The family was sacrificed to the wife.

When Christianity obtained the power to legislate, the family was reinstated in supremacy, and the wife again made legally subordinate to her husband. Since the Reformation the legal and economic emancipation of women has made frequent advances; and the problem of the present day in this matter is: How shall the legal and economic emancipation of women be made compatible with the true interests of the family? A clue to the answer may, perhaps, be found in recognizing that there are two ideals of family life, and that, while the emancipation of women is impossible without destroying the one, as it did in Rome, it may be reconciled with the other.

The Roman theory of the family is based on the complete supremacy of the husband and father, *manus* and *patria potestas*. This despotic theory, abandoned by the later Roman jurisprudence, was substantially restored by the canon law, and extended over Europe by the power of the ecclesiastical courts. The view that the wife was owned by her husband, and the not very dissimilar view that her legal personality during marriage was merged and lost in his, were natural and inevitable in times when property in persons, as slaves, was universally recognized and justified, and the original depen-

dence of legal rights upon force hardly lost from sight. Slavery has been perpetuated into our own age. Its central idea, that property in persons is natural and legitimate, still lives and flourishes. Many a man feels himself the owner of wife and child, and treats them as his property.

The kernel of the other ideal of marriage, the democratic ideal, is found in the Teutonic emphasis upon freedom and individuality, and the Teutonic honor of womanhood. This ideal bases the family, not upon the despotic authority of a single head, but upon the consenting and harmonious wills of two equals; not upon *manus*, but upon marriage. The development and establishment of this ideal of the family have been retarded by the influence of the ecclesiastical courts denying the equality of women in marriage, and also by the prevalence of slavery and constant appeals to war and force as final arbiter of all disputes. Even down to the present time, this ideal has not made itself at home in the minds and hearts of all our people, and many a dispute between husband and wife is at bottom a clashing of the old and new, the despotic and democratic theories. As a democracy requires more knowledge and political virtue than a despotism, so the successful and harmonious management of a family on a democratic basis of equality and delegated powers demands more fidelity and more adaptation than when a single will holds sway.

§ 44. *The Remedy*

The whole argument of this monograph has gone to show that legal provisions of whatever sort have little direct and permanent influence upon divorce. Restrictions on marriage, restrictions on divorce and restrictions on remarriage after divorce have been tried in various places and at various times, and have proved of little effect.

Law emphasizes rights; at all times of great change in the state or in law, that emphasis becomes excessive. The religious wars to assert the right to freedom of conscience, the French Revolution to proclaim the rights of man, the

American Revolution to maintain the taxpayers' right to representation, and the Civil War to establish the slaves' right to freedom, are familiar illustrations. The same is true of that peaceful revolution by which within the past century women's rights have been increased. In all cases where too much has been expected of such legal reforms, disappointment or despair has resulted. The discontent Mr. Bryce finds characteristic of the age is, perhaps, in part explicable as the discouragement resulting from the failure to regenerate the world on either side of the Atlantic by any sort of legislation. New rights can mean only new responsibilities and new duties; unless the one be accepted and the other performed, little or nothing is really gained.

The whole ideal and tendency of our modern civilization are to teach every individual self-direction and self-government. No legal reform can do such work. The state, indeed, may do much, but not directly, through its laws. On the contrary, its main work must be as an educator of public opinion, and like a wise teacher, it must set lessons not too difficult for the average capacity of the class. It is to hold up a standard of morality as far in advance of the average standard in the community as possible, without bringing the law into contempt or disregard. So far as law contributes to this work of education and moral improvement, it may be of immeasurable value.

Even greater are the opportunities afforded to the state by its schools and institutions of learning. Here it is brought into direct and intimate contact with the minds of citizens while young and plastic. Moral education on these subjects in our schools is sadly lacking. Obviously, it should relate, not directly to divorce, but to all the relations and duties of home life so constantly and sadly misunderstood. The neglect of these is the seed, and divorce only the fruit.

The church or ethical society has, perhaps, greater power and better opportunities than the state for educating and purifying public opinion. The opportunities have long been sorely

neglected, and public opinion allowed to degenerate. Our situation resembles in some degree that of the Roman Empire. Women, there, were emancipated by law and custom; again they have gained their freedom, legal and economic. A moral or religious reform, like that which came in Christianity, is needed to teach and enforce the new duties that have come with the new rights and new powers: new duties of wives to remain faithful to their husbands, though not compelled as formerly by law or economic dependence; new duties of husbands to treat their wives not as subordinates, but as equals.

If it be admitted that the family is in a state of reconstruction, that its old form is proving insufficient for meeting the new conditions, then a careful and thorough study of the subject, in all its relations, is a prime necessity. Otherwise the education just urged will be incorrect and misleading.

Education in all the relations and admitted duties of home life, moral and religious reform to supply motives for a performance of the duties thus made clear, and study to determine the changes in the family introduced by our new conditions and the attendant change in duties; such are the remedies that appear of permanent value.

APPENDIX

THE Eleventh Census has now reported for the first time the conjugal condition of the population of the United States, and its divisions.¹ Married persons constitute a numerical proportion of the entire population which varies widely from state to state. In Maine, New Hampshire and Vermont, over four-tenths of the population are married, but in Virginia or Nevada little more than three-tenths. This recent information from the Census Office enables one to estimate the number of married persons in each state for the years covered by Mr. Wright's report by a more accurate method than that necessarily followed in the thesis. It assumes that the proportion of married persons in the total adult population of each state has remained constant since the war. In fact the proportion has been slowly decreasing, but as no measure of the decrease is attainable, the assumption is the best possible approximation to the facts. Such a method allows for the wide differences between different states, and also for the decreasing proportion of children in the same state from decade to decade, but necessarily neglects the variation in the proportion of adults who are married in any one state. This, however, can seldom if ever exceed two per cent. After computing the number of married couples at the date of the earlier censuses, one may by interpolation estimate that number for the middle of each of the twenty calendar years in question. The number of divorces for a year divided

¹ Eleventh Census, *Population*, Part I, pp. clxxix-clxxxviii and 827-910. Also *Abstract*, 2d ed., pp. 56, 57.

APPENDIX

by this estimated number of married couples, will give the divorce-rates found in the following table. They are believed to be as accurate as it will ever be possible to make them, and an improvement on those contained in the text.

Divorce-Rate to 100,000 Married Couples, 1867-1886

Year.	North Atlantic States	South Atlantic States	North Central States	South Central States	Western States	United States
1867	157	53	277	98	342	173
1868	157	43	270	92	310	169
1869	156	45	272	103	347	174
1870	143	52	258	111	339	168
1871	138	53	268	124	334	172
1872	132	58	281	129	382	178
1873	146	62	272	145	464	183
1874	161	65	270	138	493	190
1875	145	68	266	145	485	187
1876	133	66	264	154	502	190
1877	133	68	264	167	526	196
1878	138	65	273	179	511	196
1879	136	73	286	204	536	202
1880	157	82	315	235	579	227
1881	147	83	324	251	615	233
1882	161	91	336	235	617	241
1883	148	94	336	264	647	246
1884	145	95	322	256	600	237
1885	137	97	318	278	528	236
1886	149	106	334	296	527	250
Per cent. of increase .	—5.4	100	20.6	202	54.1	44.5

The table shows that in the twenty years divorce slightly decreased in the north Atlantic states, increased about one-fifth in the north central states, about one-half in the western states, doubled in the south Atlantic states, and trebled in the south central states. It also shows that directly after the war divorce was least frequent at the south, more frequent at the north, and most frequent at the west, but that at the end of the twenty years it was least frequent in the east, more frequent in the central states, and most frequent in the west.

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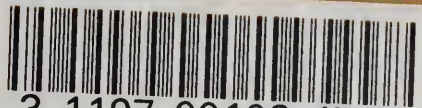
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